

Vol. I

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 379

COLORADO INTERSTATE GAS COMPANY,
PETITIONER,

vs.

FEDERAL POWER COMMISSION, CITY AND
COUNTY OF DENVER, COLORADO, PUBLIC
SERVICE COMMISSION OF WYOMING, ET AL.

No. 380

CANADIAN RIVER GAS COMPANY, PETITIONER,

vs.

FEDERAL POWER COMMISSION, CITY AND
COUNTY OF DENVER, COLORADO, PUBLIC
SERVICE COMMISSION OF WYOMING, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED AUGUST 22, 1944.

CERTIORARI GRANTED NOVEMBER 13, 1944.
JANUARY 2, 1945.

Volume 1
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United States Circuit Court of Appeals
TENTH CIRCUIT

No. 2550.

COLORADO INTERSTATE GAS COMPANY,
a corporation, PETITIONER,

vs.

**FEDERAL POWER COMMISSION; CITY AND COUNTY
OF DENVER, COLORADO; PUBLIC SERVICE
COMMISSION OF WYOMING; COLORADO-WYO-
MING GAS COMPANY; and CANADIAN RIVER
GAS COMPANY, RESPONDENTS.**

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FILED SEPTEMBER 9, 1942.

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PANY OF COLORADO; and COLORADO INTER-
STATE GAS COMPANY, RESPONDENTS.

Petition of Colorado Interstate Gas Company to Review and
Set Aside an Order of the Federal Power Commission,
Case No. 2550.

Colorado Interstate Gas Company, a Delaware corpora-
tion, herein referred to as Petitioner, being aggrieved by an
Order of the Federal Power Commission dated March 18,
1942, as amended April 22, 1942, respectfully petitions this
Honorable Court to review and set aside said Order; and
in support of its petition respectfully represents and shows:

A.

The Nature of the Proceedings as to Which
Review is Sought.

The Order of the Federal Power Commission which your Petitioner now seeks to have reviewed and set aside, was entered after a hearing in three consolidated proceedings brought against Petitioner and others. The proceedings were instituted and the Order made purportedly under the authority of and in accordance with the terms of the Act of Congress known as the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 824). These proceedings were entitled and docketed before the Commission as follows: "City and County of Denver, Complainant v. Public Service Company of Colorado, Colorado Interstate Gas Company, et al., Defendants, Docket No. G-118"; "Public Service Commission of Wyoming, Complainant v. Colorado-Wyoming Gas Company, et al., Defendants, Docket No. G-121"; and "In the Matter of the Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, Docket No. G-124."

Case No. G-118 was instituted December 22, 1938, by the filing of a complaint by the City and County of Denver against Public Service Company of Colorado, Canadian River Gas Company and your Petitioner. The City alleged that the prices being charged by your Petitioner for wholesale deliveries of natural gas at the city gate to the Public Service Company of Colorado, an independent distributing company operating in Denver under a franchise from that City, were unreasonably high, and prayed that such rates be reduced. In that case your Petitioner filed its answer setting forth the fact that the taxpaying electors of the City, acting pursuant to Article XX of the Constitution of the State of Colorado, and the Denver Charter, had, on February 8, 1927, voted a twenty-year franchise to the said Public Service Company of Colorado for the distribution of gas within said city. The answer set out the following provision contained in said franchise:

"If at any time during the first ten (10) years of this franchise the Mayor and Council of the City, after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, shall by

majority vote of the Council with approval of the Mayor determine that it is feasible to bring natural gas to Denver and shall give notice to the Company of their findings, together with engineering information upon which such determination was based, and provided a fair and reasonable rate is established for such service; then within two years thereafter the Company shall make such supply available to the City."

(This franchise was received as Exhibit 24 before the Commission.)

Your Petitioner then alleged the fact that pursuant to said franchise the Mayor and the City Council had employed one A. C. King, an independent engineer; that the said King had investigated the feasibility of bringing natural gas from the Texas Panhandle field to Denver by pipeline; that he had reviewed such a project then proposed by the parties who later organized and financed Petitioner, Colorado Interstate Gas Company, and that the said King, so acting for said City, had concluded that said project was feasible on the basis of a 40 cent gate rate, and that said King had found such a 40 cent gate rate to be reasonable.

Your Petitioner further alleged that on September 14, 1927, Denver passed its Ordinance No. 178, Series 1927, and that Section 2 of said ordinance provided:

"That after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of, said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith, upon the final passage, publication, and approval of this Ordinance by the Mayor, to deliver to said Public Service Company of Colorado a duly certified copy thereof, together with a verified copy of the Report on Proposed Natural Gas Rates for Denver, dated August 10, 1927, which was prepared, after investigation, by A. C. King, Consulting Engineer of Chicago, Illinois, and which said report constitutes

the engineering advice and information upon which said findings and determination are based, and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had for particularity and notice of which is hereby given to said Public Service Company of Colorado in conformity to the provisions of said Section IV-c of said above mentioned Franchise."

(This Ordinance was received as Exhibit 25 before the Commission.)

In the answer in said case it was further alleged that Section 2 of said Ordinance granted to the Public Service Company of Colorado the right to sell natural gas in place of manufactured gas under a schedule of rates, which rates were prescribed for the full "unexpired term of said franchise," that is, until February 8, 1947. Section 3 of said Ordinance provided, in part, as follows:

"Under said Franchise said Public Service Company of Colorado is required to supply said City and County and its inhabitants with natural gas as long as the same is available, during the unexpired term of said Franchise, and a reserve acreage of gas leaseholds in the State of Texas, from which natural gas may be supplied sufficient for the uses of said City and County of Denver and its inhabitants during the unexpired term of said Franchise, by contract, has been rendered available to said Public Service Company of Colorado."

The contract for the supply of gas referred to in said Denver Ordinance, was the contract negotiated by the parties who organized and financed your Petitioner, and is more particularly referred to hereinafter.

Your Petitioner in said case further alleged that the aforesaid action by the City of Denver induced the persons who formed and financed your Petitioner to negotiate and enter into a contract with said Public Service Company of Colorado, dated January 3, 1928, for the sale of gas to that distributing company at the city gate at 40 cents per Mcf for the full unexpired term of that company's franchise, that is, until February 8, 1947; to enter into a contract with the Colorado Fuel and Iron Company for the direct

sale of gas to that company at Pueblo, Colorado, on an interruptible or cut-off basis or off-peak load basis for industrial purposes, for substantially the same period of time, and to enter into a contract with the Canadian River Gas Company for a supply of gas from the Texas Panhandle gas field to be delivered to your Petitioner at Clayton Junction, New Mexico, and to venture their capital and construct the pipe line, with its laterals and other equipment, from Clayton Junction, New Mexico, northward to Denver, Colorado, at a cost for the whole project in excess of \$20,000,000, and that in building said line and entering into said contracts such action by the City was relied upon.

Your Petitioner in its answer in said case further alleged that it was wholly independent of the Public Service Company of Colorado; that it entered no municipalities and possessed no public franchises. It further alleged that in its articles of incorporation, and in all of its subsequent conduct, it had disclaimed both the obligations and the rights of a common carrier or public utility; that it had exercised no right of eminent domain or condemnation, but had purchased and paid for at negotiated prices all of its necessary rights of way, and that it had procured under contract from public authorities, and had paid for, where demanded, the right to place its pipelines beneath public highways and lands. It set forth the fact that it had limited its business to the sale of gas to a few selected customers under negotiated contracts; and that all of such contracts were approximately coterminous with its contract with the Public Service Company of Colorado, terminating in 1948.

Your Petitioner then asserted that the City of Denver, by reason of its actions, was, in equity and good conscience, estopped from questioning the legality of the gate rate being charged to Public Service Company of Colorado prior to the expiration of your Petitioner's contract with said Public Service Company, which contract was coterminous with the distributing company's franchise from the City of Denver for the distribution of said gas.

Your Petitioner further asserted that under the facts, the Commission was without power to abrogate the contract prices prior to the termination of the contract in 1948.

Finally, your Petitioner denied, in any event, that said contract prices were unjust, unreasonable or unduly discriminatory.

Case No. G-124 was instituted January 9, 1939, by the filing by the Public Service Commission of Wyoming of a complaint with the Federal Power Commission alleging that the charges for natural gas to the distributing company at Cheyenne, Wyoming, by Colorado-Wyoming Gas Company, an independent pipeline and distributing company, to which your Petitioner sold some gas under contract, were unreasonably high, and asking that the same be reduced. In this case, your Petitioner, although not a named defendant, filed an answer setting forth the nature of its business in allegations similar to those contained in its answer in Docket No. G-118 above described, and alleging that it had negotiated a contract for the sale of gas to the Colorado-Wyoming Gas Company at a specified price until 1948, and that such contract was not subject to abrogation prior to its expiration, and denying, in any event, that the price charged was unjust or unreasonable.

Case No. G-124 was instituted by the Federal Power Commission on its own motion by its Order of March 14, 1939. This was an investigation of all of the contracts of your Petitioner for the sale of gas for resale in interstate commerce, but was not directed to the contracts of your Petitioner for the direct sale of gas to its few industrial customers such as the Colorado Fuel & Iron Company, as aforesaid, which direct sales are not subject to regulation under the Natural Gas Act. In that case, your Petitioner filed an answer setting forth the facts already set forth in its answer in Docket No. G-118 above described. In addition, in its answer in Docket No. G-124, your Petitioner alleged that while it relied principally upon its twenty-year contract dated January 3, 1928, with Public Service Company of Colorado in venturing its capital and building its line, it, also, relied upon a few additional contracts, all approximately coterminous with its twenty-year contract with Public Service Company, but covering the sale of much smaller quantities of gas. It alleged that these additional contracts were entered into to make the project feasible, and to guarantee, as far as possible by means

of such contracts, the protection of its ventured capital. In its answer it set out its other contracts as follows: Contract with The Arkansas Valley Natural Gas Company, terminating June 23, 1948, for the sale of gas to be distributed by that company to a few small villages in the Arkansas River Valley, Colorado; contract with Citizens Utilities Company, terminating May 1, 1942, for gas to be distributed by that company at La Junta, Colorado, and neighboring villages; contract with the city of Colorado Springs, terminating June 19, 1948, for the distribution by that city, through its municipally owned system, of gas to its customers; contract with the Natural Gas Pipeline Company of America, continuing to September 30, 1946, and thereafter subject to certain limitations, at the election of the buyer; and contract with Pueblo Gas & Fuel Company, terminating June 21, 1948, for the sale of gas to be distributed by that company in Pueblo, Colorado. It alleged that each of said contracts prescribed a fixed price for the full term of the contract, and that the contracts to the distributing companies were generally at the rate of 40 cents per Mcf. Further, Petitioner asserted that, under the circumstances, none of the contracts were subject to abrogation by the Commission prior to their termination dates.

Finally, Petitioner denied, in any event, that the contract prices were unjust, unreasonable or unduly discriminatory.

Prior to entering the Order of March 14, 1939, in its case No. G-124, the Federal Power Commission had sent out to all natural gas companies, including your Petitioner, certain questionnaires as to their status and nature of their business. These questions were answered by your Petitioner. The Commission's Order, in addition to ordering a hearing, purported to make certain findings of fact and conclusions of law with respect to your Petitioner's status, business and contracts. Your Petitioner, believing said findings and conclusions to be erroneous, and fearing that they would become res adjudicata unless challenged within the time and in the manner provided by the Natural Gas Act, filed with this Court a petition for review in Cause No. 1931 of this Court's docket. This Court held in Opinion reported in 110 Fed. (2d) at page 350 et seq., and, upon rehearing, in Opinion reported in Vol. 113 Fed. (2d) at

page 1010 et seq., that the Power Commission's Order of March 14, 1939, was merely preliminary and procedural, and that the purported findings, included in said Order with respect to your Petitioner's status and business and contracts, were not and would not become, res adjudicata or conclusive, pending a hearing on the merits.

Thereafter, on September 13, 1940, the Commission entered an Order consolidating the three said Causes for hearing. The hearing was held before Norman B. Gray, an Examiner of said Commission, beginning October 28, 1940, and finally terminating the 21st day of April, 1941. The City and County of Denver appeared, but offered no evidence in support of its complaint, except certified copies of certain annual reports of Petitioner to the Secretary of State of Colorado, showing summaries of its assets and liabilities, and profit and loss, and the testimony of one Táblyn, an employee in the office of its Tax Assessor, as to the cost of reproducing certain of this Petitioner's buildings housing compressor stations and certain employee residences. No other municipality complained or appeared. No distributing company or individual customer of the Petitioner, and no other consumer of natural gas complained or appeared. All the evidence in support of the complaint was adduced by the Commission itself through its own full time employees. The record consists of 103 volumes of testimony and 323 exhibits in addition to pleadings and orders.

Thereafter, on the 11th day of March, 1942, your Petitioner filed with the Commission its "Petition of Colorado Interstate Gas Company to Reopen the Above Entitled Proceedings to Take Further Evidence." This petition averred that the acceleration of the national defense program and finally the declaration of war in December, 1941, all intervening between the time of the closing of the hearing on April 21, 1941, and the date of the petition, March 11, 1942, had caused drastic increases in its operating expense, substantial increases in the cost of necessary additions to its plant and property, and offered to introduce evidence as to such increases.

Thereafter, on March 25, 1942, the Commission served upon your Petitioner its final rate order in said consolidated

dockets, dated March 18, 1942. This Order included a denial of Petitioner's petition of March 11, 1942, to reopen and take further evidence. In its Order, the Commission purported to find that the prices being charged by Petitioner to the six distributing companies and one pipeline company, under long-term contracts terminating as aforesaid, and which had been negotiated and substantially performed some ten years prior to the Natural Gas Act of June, 1938, were all unjust and unreasonable. Basing its conclusions on operating revenues and expenses for the pre-war year 1939, it found that Petitioner's net revenues were excessive in the aggregate amount of \$2,065,000 per annum, and directed that Petitioner file with it on or before April 25, 1942, schedules of rates in lieu of contract prices, which for the future would reflect an annual reduction in its revenues of not less than said \$2,065,000 per annum so found to be excessive for the year 1939.

On April 14, 1942, your Petitioner filed with the Commission its "Petition of Colorado Interstate Gas Company for Rehearing and to 'Reopen,'" and also its "Motion of Colorado Interstate Gas Company for Stay of the Commission's Order of March 18, 1942." On April 22, 1942, the Commission denied Petitioner's motion for a stay, except that it did modify its Order of March 18, 1942, to the extent of providing that Petitioner should file with it the new schedules on or before May 19, instead of April 25, 1942, to be effective as to all bills regularly rendered on and after May 20, 1942. On May 13, 1942, the Commission denied Petitioner's petition for a rehearing.

On May 16, 1942, this court granted your Petitioner's petition for stay pending judicial review of said Order herein.

B.

The Facts and Statute Upon Which Venue is Based.

The statute upon which venue in this case is based, is Section 49(b) of the Natural Gas Act; Act of June 21, 1938, c. 556, 52 Stat. 833; Section 717 r (b), Title 15 USCA, the pertinent part of which reads:

"Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding,

may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business

Petitioner is a private corporation organized and existing under the laws of the State of Delaware. It owns and operates a main transmission natural gas pipeline extending from Clayton Junction, New Mexico, to a point just outside the city limits of the City and County of Denver, State of Colorado. Its General Manager and other representatives have their offices at Colorado Springs, Colorado. All of its physical properties are located, and all of its sales take place within territory comprising the Tenth Circuit.

C.

The Points on Which the Petitioner Intends to Rely.

At the outset, and to avoid unnecessary repetition, Petitioner asserts that each of the errors hereinafter specifically assigned under the following Points operates to confiscate and to take Petitioner's property without just compensation, and to deprive Petitioner of such property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States, and that none of the Findings of the Commission hereinafter challenged is based upon the substantial evidence required by the Natural Gas Act, and each is contrary to the evidence.

First Point.

Conceding the constitutionality of the Natural Gas Act on its face, and its applicability in the ordinary case, nevertheless, the Commission erred in retrospectively applying the Act so as to abrogate prices agreed upon in contracts of Petitioner, made and substantially performed prior to its enactment, and which prices, for the full terms of such contracts, constituted the inducement for the building of the pipeline and the investment of Petitioner's money, and which contracts were made and substantially performed by Petitioner when it was not, either in fact or in law, a public utility or a common carrier, and when it disclaimed all the privileges and obligations of such utilities and carriers. Such construction and application of the Act with respect to

Petitioner and its contracts, and the action of the Commission in setting aside such contract prices, is erroneous.

On this point, the Commission erred in failing to make specific findings upon the undisputed evidence (apparently because it deemed such findings immaterial); which errors may be summarized as follows:

(a) The Commission erred in refusing to find that in its Articles of Incorporation, and in all of its subsequent conduct, Petitioner disclaimed both the obligations and privileges of a common carrier or public utility; that it purchased all its rights of way, and procured by contract with public authorities, and paid for, when demanded, the right to cross with its pipeline underneath public highways and lands; that it possessed no municipal franchises or other special privileges; that it refused to sell gas generally; that its sales were limited to six distributing companies and one pipeline company, and to a few direct sales (even now excluded from regulation by the terms of the Act) to industries on an off-peak load and interruptible basis, and that all of said contracts were privately negotiated.

(b) The Commission erred in refusing to find that all of Petitioner's contracts were made and substantially performed at a time when neither it nor any other contracting party contemplated any change or modification through the regulatory process, or otherwise, and long prior to the effective date of the Natural Gas Act.

(c) The Commission erred in refusing to find that since said contracts were made, no material change in the extent or character of Petitioner's business or operations had occurred.

(d) The Commission erred in refusing to find that the contract with Public Service Company, fixing the price for gas at the Denver gate, was negotiated over a period lasting more than a year, and after many discussions and conferences with the Mayor and other representatives of the City of Denver, and that the gate rate therein prescribed was fixed only after independent investigation by the City of Denver, taking into consideration all economic factors involved, including said gate rate, and after rates of Public Service Company to its consumers had been fixed by Denver

for the full unexpired term of its twenty-year franchise, based on said gate rate.

(e) The Commission erred in refusing to find that the contract with Pueblo Gas & Fuel Company fixing the price for gas at the city gate was negotiated over several months between Petitioner and that company, and that the gate rate was fixed with the full knowledge of the officials of Pueblo, and only after the City had granted a franchise to that company, and had adopted rates to be charged by said distributing company to its consumers for the full term of said franchise, which rates were based upon said gate rate.

(f) The Commission erred in refusing to find that the City of Colorado Springs, as owner and operator of its municipal distribution system, had a contract with one Arthur K. Lee for its supply of gas at the city gate from the Hugoton Kansas field, and guaranteed by a \$25,000 performance deposit, but, before any gas under said contract was delivered, the City modified the contract with Lee to provide a 40 cent gate rate in contemplation of and upon the condition that he assign said contract to Petitioner, and that such was done.

(g) The Commission erred in refusing to find that in making all of its contracts and investing its money, and in the substantial performance of said contracts, Petitioner relied upon the prices to be paid for gas during the full term of said contracts, and would not have made the contracts and would not have built, and made the investment in, its pipeline, except upon the basis of said contract prices for the full terms of said contracts.

Second Point.

Assuming its power to abrogate contract prices, if found to be unreasonable, nevertheless, the Commission erred in refusing to consider any test of the reasonableness of Petitioner's contract prices other than that of its net income (erroneously determined as hereinafter assigned) and erred in refusing to find that such present contract prices were reasonable as evidenced (1) by the fact that they were arrived at after long negotiation between adverse parties, and after full and independent investigation by the Cities of Denver, Pueblo and Colorado Springs, respectively; (2)

by the fact that such prices have permitted the ultimate consumer to purchase from the distributing companies heat units at much less cost than was the case when manufactured gas was sold to them; (3) by the fact that they have permitted the ultimate consumer to purchase heat units at costs that compare favorably with the cost of coal, fuel oil and other fuels, after taking into consideration the convenience factors in favor of natural gas, and (4) by the fact that such prices have permitted substantial increases in the use of natural gas, despite competition with other fuels.

On this point, although the evidence was admitted without contradiction, the Commission erred in failing to make the findings summarized as follows:

(a) The Commission erred in refusing to find that each of Petitioner's contracts fixing the price of gas were arrived at after full investigation between competent and well-informed parties, free to contract or not, and that the contracts with the distributors in the case of Denver, Pueblo and Colorado Springs were arrived at after full investigation by those cities respectively, as set forth above under First Point (d), (e) and (f).

(b) The Commission erred in refusing to find that the gas now being sold displaced manufactured gas in Denver, Pueblo and Colorado Springs and the savings to the consumers for the same heat units under the cost of manufactured gas range from 32% to 86%, depending upon volumes used.

(c) The Commission erred in refusing to find that for house heating purposes alone in Denver, the present cost per therm to the consumer of natural gas is 6c compared to 14c per therm for manufactured gas prior to the change over.

(d) The Commission erred in refusing to find that natural gas is being sold in this territory in competition with abundant, accessible and cheap supplies of coal, fuel oil and to a lesser extent in competition with other fuels.

(e) The Commission erred in refusing to find that Colorado produces more coal than any other state west of the Mississippi River, of which 50% to 60% is mined within 50 miles of the consuming area centering in Denver, Colorado Springs and Pueblo, and that this consuming area is also

within economic transportation distance of large reserves of fuel oil.

(f) The Commission erred in refusing to find that the cost to the consumer for house heating in the Denver area per therm of natural gas is 25% to 30% more than the less convenient coal, which represents the difference the consumer, free to purchase coal, is willing to pay for the convenience factors in favor of natural gas and to be relieved from the investment and supply of coal for future use and for storage facilities.

(g) The Commission erred in refusing to find that the cost to consumer for house heating in the Denver area is the same per therm as that for heating with Grade No. 1 fuel oil; that is, 6c per therm, and by the use of Grade No. 2 fuel oil, such heat units may be had at 5c per therm.

(h) The Commission erred in refusing to find that the sales of natural gas by distributing companies supplied by Petitioner have increased substantially despite competition with other fuels.

(i) The Commission erred in refusing to find that sales by Petitioner for the year 1929, the first full year of sales after the cut-over of Mef at contract pressure base, amounted to 3,534,927 of resale domestic gas and 776,291 of resale industrial gas. Sales for 1939 were 6,818,497 of resale domestic and 4,779,513 of resale industrial.

(j) The Commission erred in refusing to find that house heating customers in the Denver area have increased from less than 1,000 in 1927, prior to the cut-over, to approximately 17,000 at this time, and the market for domestic cooking and water heating in the Denver area is now "sold" or "saturated."

(k) The Commission erred in refusing to find that aggregate sales of Petitioner's three distributing company customers in Denver, Colorado Springs and Pueblo were 3,488,019.6 Mef in 1927 and 9,376,232 Mef in 1939, with 1,150,887 Million Btu. heat units in 1927 and 7,612,048 Million Btu. heat units in 1939, for which they received in the aggregate \$2,731,739.35 in revenue in 1927 and \$5,048,972.48 in revenue in 1939; that is, such aggregate sales in-

creased by 2.69 times in volume, and by 6.61 times in heat units, but only by 1.85 times in revenue.

Third Point.

The Commission erred in basing its findings and order upon conditions existing and the operations of Petitioner for the pre-war year 1939; in determining that Petitioner's net income was excessive for said year 1939 in the amount of \$2,065,000, or in any amount, and in attempting to regulate reasonable rates for the future, effective May 20, 1942, and for an indefinite period thereafter, by the requirement that such rates be lowered to reflect a reduction in net revenue in such an amount for each future year. The Commission erred in not finding, on the basis of the evidence introduced by the Petitioner, that there was an ascending trend of cost and expense, particularly an ascending trend in taxes, even before giving effect to increases brought about by war.

Fourth Point.

The Commission erred in eliminating from the rate base, and from the base used for calculating and allowing annual amortization expense, the unamortized portion of \$2,000,000 cash value of property, originally paid by Petitioner to Southwestern Development Company, a wholly independent company, for a gas supply contract "used and useful" and essential in supplying the gas involved in this controversy; erred in not finding that the sales of gas now being made by Petitioner would not have been possible but for the execution of said contract and the payment of said consideration, and erred in failing to find that only by reason of said contract and said payment are the gas supplies, all wholly located within the state of Texas, now reserved for Petitioner and its customers.

The error on this point may be further summarized as follows:

(a) The Commission erred in its Finding No. 4 and in its statements in its Opinion respecting the true nature of the contract, and the relationship of the parties thereto. The Commission erred in not finding that Standard Oil Company (N. J.), said Southwestern Development Company and Cities Service Company, were wholly independent of each other, and that after prolonged negotiations and arm's

length dealing, each being free to contract or not, they entered into a contract on or about April 5, 1927 (Exhibit 1 before the Commission); that said Southwestern Development Company, through a wholly owned subsidiary, Amarillo Oil Company, owned a supply of natural gas, located wholly within the state of Texas; that Southwestern Development Company agreed to form another subsidiary (which later became Canadian River Gas Company), and to transfer to it title to said gas property; that Standard Oil Company (N. J.) agreed to form a subsidiary company to transport and sell the gas (which later became your Petitioner, Colorado Interstate Gas Company); that Standard Oil Company (N. J.) financed your Petitioner in part by purchasing part of its common and preferred stock for cash; that said Southwestern Development Company would not agree to put its gas supply into the project, nor enter into a contract for the supply of gas, nor permit its subsidiary to supply the gas, unless, among other considerations, there was issued to it, or its nominee, as consideration or payment, \$1,000,000 par value, of the preferred stock, and 42½ per cent, or 531,250 shares, of the non par value common stock of Petitioner. The Commission erred in failing to find that simultaneously, and for precisely the same amount of preferred and common stock, Standard Oil Company (N. J.) agreed to pay, and later did pay, \$2,000,000 in cash, and erred in failing to find that this property so issued to Southwestern Development Company had, at the time of the transaction, a cash value of not less than \$2,000,000. The Commission erred in failing to find that in accordance with said agreement, and in consideration of the receipt of said property of said cash value, said Southwestern Development Company obligated itself, through its subsidiary, so to be formed, to own, and, if necessary, acquire additional gas property, gas leaseholds and fee gas, to drill and equip the necessary wells, from time to time, and to construct the necessary pipelines and gathering facilities, to maintain all such property free from liens, debts and encumbrances, and to transport and deliver, for the full term of the project, the necessary gas to your Petitioner at an agreed junction point, which became Clayton, New Mexico, and at "cost" as in the contract defined. The Commission erred in failing to find that this obligation of Southwestern Development

Company, in the contract of April 5, 1927, and for which said consideration was paid, was made definitive by the execution of a contract between Petitioner and Southwestern Development Company's subsidiary, Canadian River Gas Company, as of January 3, 1928 (Exhibit 16 before the Commission).

(b) The Commission erred in failing to find that all of the gas reserves, and all of the pipelines and other facilities for the production and gathering thereof, all located in the state of Texas, are reserved for and made available to Petitioner and its customers only by reason of said gas supply contract and the performance thereof.

(c) The Commission erred in holding that the transaction above described was an "unjustified and fictitious increase of book cost of plant," between affiliates, and erred in eliminating the unamortized portion of such original cost for such reason or any other reason.

(d) The Commission erred in eliminating the cost of such contract, especially in view of the fact that Petitioner does not additionally or separately or otherwise claim any amount or allowance for "establishing the business," or for "going concern value," or the like.

Fifth Point.

The Commission erred in eliminating from the rate base, and from the base used for calculating and allowing annual amortization expense, the unamortized portion of \$352,940 cash value of property, originally paid by Petitioner to Cities Service Company, a wholly independent company, for gas sales contracts with that company's subsidiary distribution companies in Denver and Pueblo, and as consideration for procuring the necessary changes in and additions to the distribution plants of the distributing companies so as to make possible the distribution of natural in place of manufactured gas at adequate and uniform pressure; erred in not finding that Petitioner would not now be in business and rendering its service except for the execution of said contracts and the payment of said consideration, and erred in not finding that said contracts, and the cost thereof and the cost of procuring the conversion of the distribution systems into systems adequate for the

distribution of natural gas, were, and are "used and useful" and essential in the sale of gas now subjected to regulation.

On this point, the error may be further summarized as follows:

(a) The Commission erred in its Finding No. 4, and in its statements in its Opinion respecting the true nature of the contract, and the relationship of the parties thereto, all as set forth in the preceding Fourth Point, reference to which is made. The Commission erred in not finding that the Public Service Company of Colorado, the distributing company in Denver, and the Pueblo Gas & Fuel Company, the distributing company in Pueblo, were subsidiaries of the said Cities Service Company, and were engaged in distributing manufactured gas; that the plants and systems of the distributing companies were not fit or adequate for the distribution of natural gas; that the subsidiaries and Cities Service Company were considering procuring supplies of natural gas from sources other than those contracted for by Petitioner and hereinabove described in the Fourth Point; that Cities Service Company, and its subsidiaries, would not incur the expense necessary to convert their distribution systems into systems adequate for the distribution of natural gas, nor enter into contracts with Petitioner for their supplies of natural gas, unless Standard Oil Company (N. J.) and Southwestern Development Company, wholly independent companies, would agree to issue to Cities Service Company, as a consideration therefor, 187,500 shares of the non par common stock of your Petitioner, the company which Standard Oil Company (N. J.) agreed to form to transport and sell the gas involved. The Commission erred in not finding that after prolonged, arm's length dealing between said parties, the contract of April 5, 1927, including the obligation to pay to Cities Service Company 187,500 shares of such stock, as such consideration, was entered into (Exhibit 1 before the Commission). The Commission erred in not finding that the agreement of April 5, 1927, was made definitive by the execution of supply contracts with said Public Service Company of Colorado (Exhibit 7-I before the Commission, and with Pueblo Gas & Fuel Company (Exhibit 7-II before the Commission), and the 187,500 shares of non par stock were issued to Cities Service as

agreed. The Commission erred in not finding that at the time of the issuance of said stock it had a full cash value of not less than \$352,940, as measured by the cash simultaneously paid for a like amount of stock by Standard Oil Company (N. J.).

(b) The Commission erred in failing to find that but for the execution of the said contracts with Cities Service Company, Public Service Company of Colorado and Pueblo Gas & Fuel Company, respectively, and the payment of the consideration therefor above described, the conversion of the distribution plants and systems of said companies into systems adequate for the distribution of natural gas, would not have taken place, and Petitioner would not be in business and selling the gas at the Denver and Pueblo city gates, and, in fact, the whole project of bringing gas from Texas to Colorado would have been impossible of realization.

(c) The Commission erred in holding or implying that the transaction above described was an "unjustified and fictitious increase of book cost of plant," and erred in eliminating the unamortized portion of such original cost for such or any other reason.

(d) The Commission did include the unamortized balance of the payment made for a similar supply contract at Colorado Springs, as a part of the rate base (Op., p. 19; Order, Finding Nos. 6 and 7), and did allow annual expense to amortize the balance (Op., pp. 19 and 34; Order, Finding No. 9), but the Commission erred in not finding that the said contracts and the said payments are all alike in principle, and erred in not treating the contracts for Denver and Pueblo in the same manner.

(e) The Commission erred in eliminating the cost of such contracts, especially in view of the fact that Petitioner does not additionally or separately or otherwise claim any amount or allowance for "establishing the business," or for "going concern value," or the like.

Sixth Point.

The Commission erred in eliminating from "legitimate original cost," and from the rate base, and the base upon

which depreciation expense is determined, \$440,050 which Petitioner originally and legitimately paid or incurred for gas plant "used and useful" in the sale of gas now subjected to regulations.

This error of the Commission may be further summarized as follows:

(a) In its Finding No. 4, and in its statement on page 19 of its Opinion, the Commission, as a ground for this elimination, erroneously states that such sum "represents items originally charged to expense, in accordance with good accounting principles." The Commission fails to disclose, by proper subsidiary findings, the true facts with respect to such items. The Commission should have found, upon the testimony of its own witness Schutte, and his Exhibit 196 before the Commission, that Petitioner actually spent, in the necessary construction and additions to its pipeline, the following sums for the following items:

1. Flood and Washout Control.....	\$ 26,637.68
2. Rock Weighting	46,683.72
3. Cattle Guards.....	4,923.70
4. Bridges.....	8,052.93
5. Rip Rap and Revelments—River and Stream Crossings	24,400.99
6. Roads and Culverts	32,380.69
7. Gravel, Rock and Shale for Main Line.....	9,921.87
8. Cathodic Protection	49,935.20
9. Profile Maps	2,989.53
10. Lowering Lines	638.33
11. Spare Parts	5,623.84
12. All other, Miscellaneous	72,617.88
Total.....	<u>\$284,806.36</u>

The Commission further failed to find that the balance of said \$440,050, so eliminated, consisted of \$155,244 for general construction costs, engineering and administrative costs, applicable to net property additions and capital items.

(b) The Commission erred in failing to disclose, by a

proper finding, that all these items had been erroneously charged to expense, rather than to capital, by Petitioner long prior to regulation, and at a time when such accounting was of no consequence to anyone but Petitioner, and at a time when Petitioner was obligated, under its contracts, to deliver gas at the contract price, regardless of the state or nature of its expense or capital accounts; and the Commission erred in concluding, or implying, that the expensing of such items in the past had operated to increase the charges to the consumers, and that the capitalizing of such items at this time, would thus result in duplicate imposition upon the consumers.

Seventh Point.

In arriving at its rate base, the Commission erred in deducting on account of depreciation the amount of a hypothetical and synthetic reserve for such depreciation, constructed by the Commission for that purpose; erred in not ascertaining with respect to depreciable property "the depreciation therein," as required by Section 6(a) of the Act, and erred in rejecting the uncontradicted evidence of Petitioner showing the actual depreciation in such property.

On this point, the findings and conclusions of the Commission were erroneous in the following particulars:

(a) The Commission misconstrued the Natural Gas Act, particularly Section 6(a), thereof, which requires it to determine with respect to depreciable property for rate making purposes, "the depreciation therein."

(b) Neither the Commission nor any complainant offered evidence as to the actual depreciation in the depreciable properties. Petitioner offered complete evidence on this point which was not contradicted, and the Commission erred in refusing to find that the actual depreciation accumulated in Petitioner's portion of the physical properties of the Denver line at December 31, 1938 (January 1, 1939) as determined by a field inspection and observation and the correlative present condition of such properties were as follows:

Description	Accumulated Condition of Depreciation Properties	
	Per Cent	Per Cent
Land	00.00%	100.00%
Land Rights (Rights of Way)	00.0	100.0
Pumping Station Structures	14.0	86.0
Measuring and Regulating Station Structures	13.0	87.0
Other Transmission Systems Struc- tures	13.0	87.0
Mains	5.0	95.0
Pumping Station Equipment	12.0	88.0
Measuring and Regulating Station Equipment	10.0	90.0
Office Furniture & Equipment	20.0	80.0
Transportation Equipment	49.0	51.0
Tools and Work Equipment	20.0	80.0
Communication Equipment	16.0	84.0

(c) The Commission erred in not finding on the basis of undisputed evidence that the amount of actual depreciation, as determined by such field inspection and observation, was as of January 1, 1939 (December 31, 1938) no more than \$763,591, and that the original cost of the depreciable properties, less such actual depreciation, was \$11,289,055 (\$12,055,646 minus \$763,591), and that such original cost, less such observed depreciation, at December 31, 1939 (January 1, 1940) was \$11,317,551.

(d) The Commission erred in its Findings numbered 5 and 6, and in its statements on pages 24 to 35, inclusive, of its Opinion, with respect to accrued depreciation; erred in developing and constructing a purely hypothetical and synthetic reserve of \$2,674,805 (in addition to its accrued reserve for amortization in the amount of \$118,605) for accrued depreciation in the property as of December 31, 1939, and erred in deducting said \$2,674,805 in arriving at its rate base, and erred in deducting any amount on said account in excess of the observed depreciation set forth above.

Eighth Point.

As cost of necessary additions to property, the Commission erred in allowing only \$337,000 (Finding, No. 7) on

that account to December 31, 1941; erred in not allowing \$590,460.30 actually spent by Petitioner on that account up to December 31, 1941, and erred in refusing to permit Petitioner to introduce evidence as to the substantial cost of necessary additions and work in progress to date, which it requested in its verified application of March 10, 1942.

Ninth Point.

For working capital, the Commission erred in finding (Finding, No. 7) that \$109,065 was sufficient and reasonable, and erred in eliminating all allowances for minimum bank balances, and erred in not allowing at least \$120,000 as the necessary working capital for 1939, \$127,000 for 1940, \$134,000 for 1941 and \$142,000 for 1942.

Tenth Point.

Assuming the Commission's own theory of "prudent investment" or "original cost" for the determination of the maximum rate base (before separation, segregation or allocation made necessary by the fact that most of the property is used in transporting and selling gas subject to regulation as well as that not subject to regulation), the Commission erred in finding (Finding, No. 7) that \$9,532,064, accepted as \$9,535,000, was the maximum, and in failing to find that at least \$13,146,072 was a minimum, the difference between the Petitioner and the Commission on this point being summarized as follows:

Commission

Original Cost as of Dec. 31, 1939	\$11,879,409
Less: Accrued Depreciation, Depletion and Amortization	2,793,410
Depreciated Original Cost	9,085,999
Plus: Working Capital	109,065
Additions to Dec. 31, 1941	337,000
Prudent Investment	<u>\$ 9,532,064</u>

(The above summary is taken from page 38 of the Commission's Opinion.)

Petitioner

Original Cost (Physical Property Only) as of Dec. 31, 1939 (See Sixth and Seventh Points, supra)	\$12,081,142
Less: Actual Depreciation of Physical Prop- erties (See Seventh Point, supra)	763,591
Depreciated Original Cost of Physical Properties Only (See Seventh Point, supra)	11,317,551
Plus: Working Capital (See Ninth Point, supra)	120,000
Additions to Property to Dec. 31, 1941 (See Eighth Point, supra)	590,460
Unamortized Balance of Original Cost of Contracts (See Fourth and Fifth Points, supra)	1,118,061
Prudent Investment	\$13,146,072

The Commission further erred in not increasing said gate base of \$13,146,072 by the amount already spent to date to take care of necessary additions in 1942, and by an additional amount to take care of such additions now in the form of "work in progress," evidence of which Petitioner offered to prove in its application of March 10, 1942, prior to the Order herein of March 18, 1942, but which application was denied.

In support of this assignment, there is adopted by reference, the assignments already made in Points Fourth to Ninth, inclusive.

Eleventh Point.

The Commission erred in refusing to find, upon the uncontradicted evidence, that the cost of reproduction new less observed actual depreciation of Petitioner's physical properties alone (exclusive of working capital, subsequent additions to property and unamortized balance of original cost of contracts), as of December 31, 1938, or January 1, 1939, was at least \$11,385,356, and was as of June 30, 1940, at least \$11,431,077, based on costs obtaining at the time of the hearing, and erred in refusing to find that the fair

value of such property was not less than said sums on said dates, respectively. The Commission erred in failing to give any weight, as it admits it did (Op., p. 13) to this evidence in the determination of the fair value of such property.

Twelfth Point.

As operating expenses for the year 1939, incurred in all of its business, regulated and unregulated, the Commission found and allowed \$475,643 (Order, Finding No. 9; Opinion, page 46), which is approximately correct for that year, but the Commission erred in assuming that such amount would be the same in the future, and erred in not finding, on the basis of the evidence, that there was an ascending trend in expense, without taking into account current increases occasioned, first, by the defense program, and, lastly, by war conditions—all of which was sought to be brought to the Commission's attention by Petitioner's application of March 10, 1942, prior to the Order herein, showing that such operating expenses had further increased on account of the defense program and war conditions, all transpiring since the closing of the hearing on April 21, 1941.

Thirteenth Point.

As tax expense with respect to all of its business, regulated and unregulated, the Commission found and allowed for the year 1939, \$637,641 (Order, Finding No. 9; Opinion, page 46), which is approximately correct, but the Commission erred in assuming that such amount would continue over subsequent years, and erred in not finding, on the basis of the evidence, that there was an ascending trend in taxes prior to the enactment of present tax laws; erred in basing the tax expense on laws applicable to 1939, and in not making a greater allowance on the basis of tax increases which were certain, and erred in not granting Petitioner's application of March 10, 1942, prior to the Order herein, to show that for the year 1940 Federal taxes alone were \$684,608, and for 1941 \$1,600,000, or an increase of 134%, and that Federal taxes payable with respect to earnings from the Denver line alone were \$493,290 for 1940, and \$1,233,779 for 1941, or an increase of 150%.

Fourteenth Point.

As cost of purchased gas, regulated and unregulated, the Commission first assumed for the year 1939 the sum of \$2,112,951, which is approximately correct (Order, Finding No. 9; Opinion, page 46), but then erroneously found that such costs of purchased gas would be reduced by \$551,000 annually, which error is covered by Petition for Review by Canadian River Gas Company, in Docket No. 2551, reference to which is hereby made.

Fifteenth Point.

As annual depreciation expense, on account of depreciable physical property, the Commission erred in allowing only \$268,305 for 1939, and the same amount per annum indefinitely for the future (Order, Finding No. 9; Opinion, pages 24 to 35, inc.). The Commission erred in assuming for such purpose, that Petitioner could remain in business, so far as its gas supply was concerned, for 53 more years from December 31, 1939, or until 1992; in assuming that its markets would continue for the same period, and in assuming that its main pipeline would have a total service life, from the beginning of the project, of 50 years, and a remaining service life from December 31, 1939, of 38 years, after giving proper consideration to the exhaustion of natural resources constituting Petitioner's gas supply. The Commission erred in not allowing for such annual depreciation expense an amount large enough to restore, if not the present fair value, at least Petitioner's actual legitimate original cost of depreciable property by the end of the term of its useful economic life. The Commission erred in failing to find that such useful life would expire by June, 1948, when the last of Petitioner's contracts for the sale of gas expires, or at least by 1956, when its supply of gas will end. The Commission erred in assuming the longer life, under which, if it is mistaken, the injury will be irreparable to Petitioner, rather than the shorter life, under which, if it is mistaken, such expense may then be adjusted downward, without injury to either Petitioner or its customers or the ultimate consumers.

The erroneous conclusions and findings of the Commission on this point may be further summarized as follows:

(a) The Commission erred in eliminating from the base, upon which it calculated annual depreciation expense, \$440,050, actually and legitimately spent for depreciable properties, as hereinabove assigned under Sixth Point.

(b) The Commission erred in not including in the cost of such depreciable properties, and in the base, for the calculation of depreciation expense, \$590,460.30, actually and legitimately spent by Petitioner for such property up to December 31, 1941; and erred in not adding a reasonable sum to cover further necessary additions to the property, some of which is now in the form of "work in progress," evidence of which Petitioner offered to show, all as assigned hereinabove under Eighth Point.

(c) The Commission erred in not basing its annual depreciation expense upon the present fair value of Petitioner's properties. In substantiation of this error Petitioner adopts the assignment in the Seventh and Tenth Points, *supra*.

(d) The Commission erred in not finding that the salvage value of Petitioner's depreciable properties would be "nominal," as testified by Commission's witnesses, and would be a maximum of \$131,020 for the whole system, as testified by Petitioner's witnesses.

(e) The Commission erred in not calculating such annual expense over a short enough term, and at a high enough annual rate, as would assure the restoration of Petitioner's capital investment, measured by actual, legitimate original cost, by the time it was compelled to quit business, and erred in not finding that such term would end by June, 1948. The Commission erred in not finding that Petitioner's principal contract for the sale of gas to Public Service Company of Colorado was coterminous with that company's franchise from the City of Denver to distribute gas, and which expires February 7, 1947, and that a renewal of such franchise depends upon the uncertain vote of the taxpaying electors of said City, and further erred in assuming that even though a franchise was renewed, the distributing company would not be free to purchase gas from sources other than Petitioner. To this same point,

the Commission erred in not finding that Petitioner's contract with Pueblo Gas & Fuel Company was likewise co-terminus with that company's franchise to distribute gas in Pueblo, which would expire in June, 1948, and that the renewal of such franchise was likewise dependent upon the uncertain vote of the taxpaying electors; and that, in any event, there was no assurance that gas would be purchased from Petitioner after that date. Likewise, the Commission also erred in failing to find that Petitioner's contract with the municipality of Colorado Springs, for the sale of gas to its municipally owned distribution system, also terminates on June 19, 1948, and that all other such contracts of Petitioner for the sale of much smaller amounts of gas, also terminate in June, 1948, or at an earlier date.

(f) In any event, the Commission erred in not finding the maximum period for the depreciation term to be the 18-year period from 1939 to 1956, in which last year the gas supply would terminate. Petitioner refers to and adopts Canadian River Gas Company's Petition for Review on this point, in Docket No. 2551 in this court.

(g) The Commission erred in failing to make the necessary findings as to the service lives of the several items of property which it did use, and erred in failing to disclose by its Opinion or Findings the manner in which it calculated the depreciation expense allowance. For this reason, Petitioner is unable to make more specific assignments of error, but it appears that the Commission has erroneously assumed a 50-year life, at the rate of approximately 2% per annum on most of the depreciable items. It further appears that the Commission assumes that such rate would be applied up to the very date when Petitioner goes out of business. In this respect, the Commission erred in that such property cannot be operated to the date of expiration, without the expenditure of large sums of money for replacements, betterments, additions and rehabilitations of the property in the latter years of its life and until just before the date of expiration, and the Commission makes no provision under its method by way of depreciation expense, or otherwise, to take care of the cost of such necessary additions.

(h) The Commission erred in not allowing for annual depreciation expense a minimum of \$517,266 per annum, comprised of (1) \$10,276 annually for depreciation on automobiles and trucks and like property subject to short term replacement, and (2) \$506,990 as annual depreciation requirement for all of the other physical properties having a longer life.

Sixteenth Point.

As amortization expense for contracts, the Commission allowed \$13,890 per annum to amortize the balance of the costs of the contract covering the sale of gas at the Colorado Springs city gate (Order, Finding No. 9; Opinion, page 46), but erred in failing to allow additional annual expense to amortize the balance of the costs of similar contracts covering the sale of gas at the Denver and Pueblo city gates, respectively, referred to hereinabove under Fifth Point, and to amortize the balance of the cost of its gas supply contract referred to hereinabove under Fourth Point. The Commission erred in not allowing, as additional amortization expense, \$117,647, or a total of \$131,536 per annum, on the same basis as it employed for amortizing the costs of the Colorado Springs contract.

On this point, there is also adopted by reference, the error assigned under Fourth and Fifth Points, and under paragraph (e) and paragraph (f) of the Fifteenth Point.

In this connection, the error of the Commission may be further summarized as follows:

(a) The Commission erred in not finding and allowing, even upon a sinking fund basis, an additional amortization expense of \$16,445 per annum for the Denver and Pueblo sales contracts, or a total on such basis of \$29,338 per annum for the Denver, Pueblo and Colorado Springs contracts, which amount would be necessary to amortize them to the dates of their expiration.

(b) Even upon a sinking fund basis, and upon the assumption that Petitioner can remain in business and produce and sell gas through 1956, the Commission erred in not allowing an additional amortization expense of \$53,718, necessary to amortize its gas supply contracts by that date.

Seventeenth Point.

As a fair rate of return, the Commission erred in finding and allowing only $6\frac{1}{2}\%$ (Order, Finding No. 8; Opinion, pages 49 to 53, inc.), and erred in not finding that such return, under all the evidence in this case, would necessitate rates for gas that were confiscatory and lower than the lowest reasonable rate, and erred in not finding that a rate of return of at last 8% was necessary.

In any event, the Commission erred in applying the $6\frac{1}{2}\%$ rate to all of Petitioner's property and business, regulated and unregulated, which error is next assigned more specifically under Eighteenth and Nineteenth Points.

Eighteenth Point.

The Commission erred in concluding and finding that from all of its business, and upon all of its property, regulated and unregulated, the Petitioner had for the pre-war year 1939 "excessive returns" in the amount of \$1,644,805 (called \$1,645,000), and of \$2,195,800 (called \$2,196,000), after assuming and reflecting the reduction of \$551,000 per annum in cost of gas purchased from Canadian (Op. pp. 53, 58). The Commission erred in assuming and applying for the purpose of arriving at such "excessive returns" a rate of return of $6\frac{1}{2}\%$ upon all of the company's property, and with respect to all of its business, without regard to whether it was subject to regulation or not. As more particularly set out in the succeeding Nineteenth Point, the Commission erred in failing to make a separation and allocation of the property as between that used in the business subject to regulation, and that used in the business not subject to regulation, and this failure to make such a separation, coupled with the imposition or limitation of a $6\frac{1}{2}\%$ return to all of the property, regulated and unregulated, operates to apply in part, the earnings from the unregulated business in excess of $6\frac{1}{2}\%$, and over which the Commission has no jurisdiction, so as to inflate and erroneously enlarge the Commission's so-called "excessive returns" applicable to the regulated business. These errors ultimately and necessarily result in the use, in part, of earnings on the unregulated business over $6\frac{1}{2}\%$ to the reduc-

tion of rates for the regulated business, all contrary to the Act, in excess of the Commission's jurisdiction. The Commission's conclusion and finding with respect to such "excessive return" also depends upon and results from the erroneous conclusions and findings with respect to operating expenses, taxes, depreciation expenses and amortization expense, hereinabove assigned under Points Third to Sixteenth, inclusive.

Nineteenth Point.

After concluding that Petitioner's returns were "excessive" for the year 1939, in the amount of \$2,196,000 including therein the excess over 6½% upon the property and business not subject to regulation, the Commission then purports to allocate such excessive revenue or returns to the several customers of the Petitioner (Op., pp. 53 to 59, inc., and Exhibit "A"; Order, Findings No. 11, 12 and 13), but the Commission's "allocation" is erroneous in that, (1) it is not based, as the Commission admits (Op., p. 55), on any separation of the properties or plant of the Petitioner, as between regulated and unregulated business; (2) its method ignores the priority which the regulated business has over the unregulated business in the use of the property; (3) it arbitrarily results in assigning larger cost to gas delivered hundreds of miles closer to the source of supply than to deliveries requiring more compression and more transportation, and results in purported costs to the several customers that bear no reasonable relation to actual costs, and (4), to the extent that the Petitioner can discern from the vague and general statements in the Commission's Opinion and Order, it is erroneous in the other particulars herein-after more specifically stated.

The errors of the Commission may be more specifically summarized as follows:

(a) Except for specifically admitting (Op., p. 55) that its method did not contain a separation of the plant or properties of the Petitioner, as between regulated and unregulated business, the Commission failed to make basic and subsidiary findings, but has resorted to vague generalities, which in itself constitutes reversible error.

(b) The Commission erred as a matter of law in con-

cluding that it could exercise its jurisdiction under the Statute, and determine a reasonable rate for sales of gas subject to its regulation, without making any separation or allocation of the physical properties used in such business from those used in whole or in part in the sales of gas which are not subject to the jurisdiction of the Commission under the Act.

(c) The Commission erred in not finding a rate base, and the other components of a rate case, with respect to the property and business devoted to or involved in the sale of gas subject to its jurisdiction.

(d) The Commission erred in stating (Op., p. 55) that Petitioner did not submit in evidence a complete presentation of its entire operations, broken down as between the jurisdictional and nonjurisdictional operations, and in stating (Op., p. 56) that Petitioner's evidence did not "square with realities," and was "patently unreasonable," which errors more specifically assigned hereinafter in subsequent Points.

(e) The Commission erred in lumping together the properties, business, revenues and expenses pertaining to the sale of gas for resale with those pertaining to the direct sale of gas, without regard to the jurisdictional boundary line separating the two businesses, and attempted to extract from that conglomerate the cost of resale gas primarily on a straight volume basis.

(f) The Commission erred in its method by ignoring the fact that the sale of gas for resale for domestic purposes, that is the regulated business, is given priority use of all the property and facilities of Petitioner over the direct sales for industrial purposes, that is the unregulated business.

(g) The Commission erred in not recognizing or finding that the costs for the production and transmission of gas depend directly and primarily upon load factors rather than volume.

(h) The Commission erred in not making a finding as to the amount used by the Commission as fixed costs, and the amounts used as variable costs.

(i) The Commission erred in its method of allocation in that the allocation of transmission line costs between capacity costs and volumetric costs has been made in a manner that is arbitrary and discriminatory, in that volumetric costs have been unduly increased and capacity costs unduly decreased, thereby favoring or minimizing the costs charged to resale gas.

(j) The Commission erred in the allocation of transmission line capacity costs, particularly with reference to fixed charges and return on the investment. Failure to make property allocations on which to base return and depreciation charges lead only to incorrect, arbitrary and discriminatory allocations of costs.

(k) The Commission erred in adopting the allocation exhibit of the Commission's staff because the allocation of that portion of transmission line costs alleged to apply to capacity costs has been improperly allocated as between resale and direct sale gas. The percentage distribution used applies only to that portion of the property situated at and immediately north of Bivins Compressing Station, whereas the main line has at least four different ratios that should have been used.

(l) The Commission erred in lumping together the properties, business, revenues and expenses of the Petitioner with those of Canadian River Gas Company and the Colorado-Wyoming Gas Company as if they were one company, whereas, the evidence shows that they are not, and that their interests in many particulars are adverse; and that they entered into this project and carried on their business as separate entities, with adverse interest.

(m) The Commission's method is erroneous in that it gives no weight, in the determination of costs, either to the distance the gas is transported, or the number of times it must be compressed or handled before arriving at its several points of delivery. In its Order and Opinion, and as Exhibit "A" thereto, the Commission sets out, under the title "Allocated Cost of Service," the final result of its regulatory process. This result is arbitrary on its face in that it finds that the "cost of gas" to the customer, Citi-

zens Utilities Company, is 24.3 cents per Mcf as against 15.4 cents per Mcf for cost to Public Service Company of Colorado, at Denver, although the deliveries to Citizens Utilities Company take place only after two compressions, and at delivery points approximately 150 miles closer to the source of supply than Denver. The other costs arrived at in the Opinion and Order are equally arbitrary on their face, and none of them bear any reasonable relation to actual costs.

Twentieth Point.

The Commission erred in failing to find, upon evidence submitted by Petitioner, that on the basis of priority use of the facilities in the sale of gas subject to regulation, a fair apportionment of the property and expenses of Petitioner is as follows:

	Use in Sales for Resale, Regulated	Use in Direct Sales, Not Regulated
Transmission lines	82.51%	17.49%
Clayton and Canyon Compressor Stations	72.80	27.20
Devine Compressor Station	94.40	5.60
All other general property	80.25	19.75
Working capital	79.80	20.20
Contracts with Canadian for the purchase of gas	52.78	47.22
Sales contracts with Public Service Company and with Pueblo Gas and Fuel Company	100.00	0.0
Sales contracts with City of Colo- rado Springs for its municipal distribution system	78.46	21.54
Operating and maintenance expense of transmission lines	82.51	17.49
General expense and operating taxes	80.25	19.75

In addition to the foregoing separation of the existing property on a use basis, Petitioner also submitted, by way of a check and in confirmation of such foregoing separation, full evidence as to the equivalent original cost, and the other components of a rate case, with respect to a line for

resale gas only. Such evidence, based on pre-war prices, showed that such a line would cost at December 31, 1939 at least \$11,412,163, and then increase to \$11,637,163 by 1943, principally upon account of additional compressor stations, and the Commission erred in wholly discarding and ignoring this evidence, as well as the evidence of a separation based on use as above set forth.

Twenty-First Point.

The Commission erred in not finding that the present contract prices are reasonable, and in not allowing the present contracts for the purchase and sale of gas to be performed to the several dates of their expiration in 1947 and 1948, in that said contract prices are reasonable when tested, (1) on the basis of a rate base, and the other components of a rate case, separated and allocated to the sales subject to regulation, in accordance with the prior use of such facilities by such regulated business, and (2) on the basis of the equivalent original cost, and the other components of a rate case, of a line necessary for the sale of gas for resale, that is, the regulated business only. In support of this assignment, Petitioner adopts errors assigned in each and all of the foregoing Points.

Twenty-Second Point.

The Commission erred in not finding, in any event, and without regard to present contracts, and upon the assumption that Petitioner can remain in business beyond 1948, and until its markets or supply, or both, are lost, that present prices are reasonable when tested, (1) on the basis of a rate base, and the other components of a rate case, separated and allocated to the sales subject to regulation, in accordance with the prior use of such facilities by the regulated business, and (2) on the basis of the equivalent original cost rate base, and the other components of a rate case, of a line necessary for the sale of gas for resale, that is, the regulated business, only.

In support of this assignment, Petitioner adopts errors assigned in Points First, to Twentieth, inclusive.

Twenty-Third Point.

The Commission erred in finding that the rates and charges, after reflecting the reduction ordered, will be just and reasonable.

Twenty-Fourth Point.

The Commission erred in making each of its Findings numbered 1 to 14, inclusive, in that none of said Findings is supported by substantial evidence, and each is contrary to the evidence in this case; and erred in making each of its Orders lettered (A) to (E) inclusive, in that each of said Orders is contrary to law and the evidence in this case.

Wherefore, Petitioner prays:

(a) That a copy of this petition forthwith be served upon some member of Respondent, Federal Power Commission, in pursuance of Section 19 (b) of the Natural Gas Act (Act of June 21, 1938 c. 556, 52 Stat. 833; Sec. 717 r. (b) Title 15 U. S. C. A.), and that all parties respondent herein be served with a copy of said petition, as provided by Rule 34 of this court.

(b) That Respondent, Federal Power Commission, be required, in conformity with said Act, to certify and file with the court a transcript of the record upon which the Order now sought to be reviewed was entered, including the testimony, evidence, exhibits, pleadings, opinions, findings, conclusions and orders of said Respondent in the three dockets above referred to.

(c) That pursuant to Rule 34 of this court, Petitioner be notified by the Clerk when said transcript has been received, and that because of the extent of the record herein as above set out, an order be entered herein allowing Petitioner thirty (30) days from the time of such notice, or such other time as to the court may seem proper, within which to designate the portions of the transcript to be contained in the printed record, unless, in the meantime, the parties hereto have stipulated as to the contents of the printed record.

(d) That this court review said proceedings, and that said Order of March 18, 1942, as supplemented by the Order

dated April 22, 1942, be reversed, vacated, set aside and held for naught.

(e) That, pending such review, and until final determination of such proceedings, the stay heretofore granted by this court on May 16, 1942, staying said Order of the Commission, pending judicial review, be continued in full force and effect.

(f) That this court exercise its jurisdiction over the parties and subject matter of this petition, and grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require.

COLORADO INTERSTATE GAS COMPANY, Petitioner,

By WILLIAM A. DOUGHERTY,

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[Verification omitted.]

Filed July 10, 1942. Robert B. Cartwright, Clerk.

Petition of Canadian River Gas Company to Review and Set Aside an Order of the Federal Power Commission. Case No. 2551.

Canadian River Gas Company, a Delaware corporation, (hereinafter sometimes referred to as Petitioner and sometimes as Canadian), believing itself aggrieved by a final Order of the Federal Power Commission, dated the 18th day of March, 1942, as amended by Supplemental Order, dated the 22d day of April, 1942, in three consolidated proceedings against the Petitioner and others, appearing upon the docket of said Federal Power Commission (hereinafter sometimes referred to as the Commission) as Cases Nos. G-124, G-118, and G-121, said Case No. G-124 being entitled, "In the Matter of Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming

Gas Company"; said Case No. G-118 being entitled, "City and County of Denver, Colorado, Complainant, v. Public Service Company of Colorado, et al., Defendants"; and said Case No. G-121 being entitled, "Public Service Commission of Wyoming, Complainant, v. Colorado-Wyoming Gas Company, et al., Defendants," respectfully petitions this Honorable Court to review and set aside said Order, and in support of its Petition, respectfully represents and shows:

I.

The Nature of the Proceedings as to Which
Review Is Sought.

This is a petition to review and set aside a final Order of the Respondent, Federal Power Commission, purported to be entered under the Natural Gas Act against the Petitioner in the above-entitled and numbered cases before the Federal Power Commission, which Order is dated the 18th day of March, 1942, as amended by Supplemental Order dated the 22d day of April, 1942, this petition being filed pursuant to subdivision (b) of Section 19 of the "Natural Gas Act," 52 Stat. 833, Title 15 U. S. C. A., Sec. 717 r. Said Natural Gas Act is sometimes hereinafter referred to as the "Act."

On December 22, 1938, the Respondent, City and County of Denver, Colorado, filed a complaint with the Commission against Canadian and the Respondent, Colorado Interstate Gas Company, and Respondent, Public Service Company of Colorado, asking the Commission to investigate and determine the reasonable cost and charge for gas used in the City and County of Denver, and other related matters, alleging that the contract price for gas to the Public Service Company of Colorado at the Denver gate was unjust, unreasonable and discriminatory, and praying that the contract price be abrogated and that the Commission fix reasonable rates. This is Cause appearing on the Commission's docket as No. G-118. Canadian, on or about the 30th day of January, 1939, filed its answer to said complaint of the City and County of Denver, Colorado, and the said Colorado Interstate Gas Company and the said Public Service Company of Colorado likewise filed their answers thereto.

On or about January 9, 1939, Respondent, Public Service Commission of Wyoming, filed its complaint with the Commission in Cause No. G-121 on the docket of the Commission, complaining of the rates and charges for natural gas in Cheyenne, Wyoming, made by the Respondent, Colorado-Wyoming Gas Company, and related matters, to which Canadian filed its answer on or about February 25, 1939.

On or about the 14th day of March, 1939, the Commission, in Cause No. G-124 on the docket of the Commission, ordered upon its own motion an investigation by the Commission of and concerning all rates, charges, classifications, rules, regulations, practices or contracts of Canadian and of Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, to which Canadian filed its answer on or about October 10, 1940.

On or about April 12, 1939, Canadian and Colorado Interstate Gas Company filed with the Commission their petition for rehearing and stay of the said Order of investigation of March 14, 1939, which petition the Commission did deny on or about the 9th day of May, 1939.

Thereupon, Canadian and Colorado Interstate Gas Company did file in this court in Cause No. 1931 on the docket of this court their petition for review pursuant to Section 19 of the Natural Gas Act, 45 USCA, Sec. 717r, and the Commission did file its motion to dismiss said petition for review which this court did sustain on or about the 4th day of March, 1940. This court did deny the petition for rehearing of Canadian and Colorado Interstate Gas Company on or about July 24, 1940. The opinions of this court in said proceedings are reported in Volume 110 Fed. (2d) 350 and Volume 113 Fed. (2d) 1010. Said opinions contain a summary of the facts in these cases up to said time.

Thereafter, and on or about the 13th day of September, 1940, the Commission did enter its order providing that said Causes numbered G-118, G-121, and G-124 be consolidated for hearing and setting the 28th day of October, 1940, in Denver, Colorado, as the time and place for the start of said hearing.

Thereafter a hearing in said consolidated causes was

held by and before Norman B. Gray, an examiner duly appointed and designated for said purpose by the Commission, said hearing consuming 102 hearing days and continuing from the 28th day of October, 1940, to the 21st day of April, 1941. Extensive evidence, consisting of oral testimony, exhibits and other documentary evidence, was introduced. The transcript of the testimony comprise 103 volumes and is in excess of 15,000 pages. In addition to this testimony, 323 exhibits were introduced.

Thereafter the various parties to said proceeding filed their briefs with the Commission, aggregating in excess of 2200 pages. Canadian's reply and last brief was filed on or about the 19th day of August, 1941. The last of all of said briefs filed with the Commission by any of the parties to said proceeding was filed in the month of September, 1941.

Thereafter, and on or about the 11th day of March, 1942, Canadian did file with the Commission its "Petition of Canadian River Gas Company to Reopen the Above-Entitled Proceedings to Take Further Evidence," dated March 10, 1942, in which Canadian did, among other things, point out that the evidence introduced before the Examiner of the Commission was to the greatest extent based upon actual facts only up to and including the year 1939 and estimated facts for years 1940 and 1941 and years subsequent thereto, and that due to war conditions, taxes and other expenses of Canadian had greatly increased since the evidence was introduced. Said Petition to Reopen pointed out that the record before the Commission was based upon peace-time operations, and that the war had seriously affected Canadian's operations and would continue to do so in the future; and Canadian stated its desire to introduce further evidence as to the effect of the war upon Canadian's operation.

Thereafter the Commission did enter and issue its "Order Reducing Rates," dated the 18th day of March, 1942, and served upon Canadian on or about the 25th day of March, 1942, which order contains a number of findings of fact, made by the Commission upon which said Order is based, and incorporates therein as a part thereof the Commis-

sion's Opinion No. 73, dated the 18th day of March, 1942. Said Commission's Order of March 18, 1942, did deny Canadian's petition of March 10, 1942, to reopen said proceedings for the purpose of taking further evidence, and did order Canadian to file with the Commission, on or before April 25, 1942, new schedules of rates and charges for and in connection with the transportation and sale of natural gas in interstate commerce for resale to become effective as to all bills regularly rendered on and after May 15, 1942, and to reflect an aggregate annual reduction in Canadian's rates and charges of not less than \$561,000 per year, being \$551,000 per year on gas sold to Colorado Interstate Gas Company, and \$10,000 per year for gas sold to Clayton Gas Company.

Thereafter, and on April 14, 1942, Canadian filed with the Commission its Petition for Rehearing and to Reopen directed to the Commission's Order, dated March 18, 1942, and the findings and the Commission's opinion incorporated therein. At the same time that Canadian filed said Petition for Rehearing it did also file with the Commission its Motion for Stay of the Commission's Order of March 18, 1942, pending a ruling upon Canadian's Motion for Rehearing and to Reopen and, if said motion should be denied by the Commission, then pending the filing in this court of a petition to review pursuant to the provisions of Subdivision (b) of Section 19 of the Natural Gas Act and the decision of this court on such Petition to Review.

Thereafter, and on the 22d day of April, 1942, the Commission did deny Canadian's Motion for Stay, except that the Commission did, by its said Supplemental Order of April 22, 1942, postpone the time that Canadian should file said new schedules of rates and charges to May 19, 1942, to become effective as to all bills regularly rendered on and after May 20, 1942.

Thereafter, and on the 13th day of May, 1942, the Commission did enter its Order denying Canadian's Petition for Rehearing and to Reopen and did in connection therewith render its Opinion No. 73-A.

It is to the Order reducing rates and the findings therein and the Commission's Opinion No. 73 incorporated therein,

dated the 18th day of March, 1942, as amended by the Commission's Order of April 22, 1942, extending the time for filing of the new schedule of rates and charges to May 19, 1942, and to the Order of the Commission of May 13, 1942, and its Opinion No. 73-A denying Canadian's Petition for Rehearing and to Reopen, to which this Petition to Review is directed. By its Order entered herein on May 16, 1942, this court has stayed and suspended the Commission's Order against Canadian pending this review.

The Facts and Statute Upon Which Venue is Based.

The statute upon which venue in this case is based is Section 717 r (b), Title 15 USCA, of the "Natural Gas Act," (Act of June 21, 1938, c. 556, 52 Stat. 833), and the pertinent part reads:

"Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding, may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business"

Canadian is engaged in the production and gathering of natural gas in what is known as the Amarillo, Texas, or Texas Panhandle Gas Field, and the transportation thereof to certain points for sale as follows:

Substantially all of such gas so produced is sold to the Colorado Interstate Gas Company at a point near Clayton, New Mexico, or at Gray, Oklahoma. A small portion of such gas is sold and delivered to Clayton Gas Company at Clayton, New Mexico, and Amarillo Oil Company in Texas. The production and gathering of such natural gas and the facilities used by Canadian River for such purpose are in Texas, but such property and transactions are exempted from the provisions of the Natural Gas Act by Section 1 thereof (Title 15 USCA, Sec. 717). Substantially all of the gas sold by Canadian is sold, as aforesaid, within the territory of this Circuit. The General Manager and other representatives of Canadian have their office in Colorado Springs, Colorado.

The Points On Which the Petitioner Intends to Rely.

In this review Petitioner intends to rely upon each and all of the following points, all of which were urged before the Commission in its Petition for Rehearing and to Re-open. For convenience purposes our various detailed specifications are grouped under general points. A specific detailed specification may be applicable to more than one general point, but, to avoid unnecessary repetition, is listed only one time, our intention, however, being to rely upon each detailed specification under all general points to which it may be pertinent. For the sake of brevity, Colorado Interstate Gas Company will sometimes hereinafter be referred to as Colorado.

Even though not expressly so stated in the body of each specific point and subdivision thereof hereinafter set forth, Canadian asserts and contends that each of the errors hereinafter specifically assigned operates to confiscate its property and to deprive it of its property without due process of law and to take its property for public use without compensation contrary to the Fifth Amendment to the Constitution of the United States, and asserts and contends that none of the findings of the Commission hereinafter challenged are based upon the substantial evidence required by the Natural Gas Act, and each is contrary to the evidence.

Point No. 1.

In view of the local character and private nature of Canadian's production and gathering properties, facilities and business, and in view of the provisions of Section 1 of the Natural Gas Act which, by their express affirmative language, make the Act apply only "to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale," and the further express language of subdivision (b) of Section 1 of the Natural Gas Act that said Act "Shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the

production or gathering of natural gas," the Commission erred in finding and ruling that it has rate-regulatory jurisdiction over Canadian's production and gathering properties, facilities and business located wholly within the State of Texas, and in its exercise of this assumed jurisdiction in this case, in that

A. Canadian's production and gathering business is local in character, has not been declared to be and is not "affected with a public interest" and is not interstate in character, and the Natural Gas Act itself provides that it shall not be applicable to such production and gathering. The Commission's rate-regulatory jurisdiction at the most extends only to the transportation of natural gas in interstate commerce and to the sale in interstate commerce of natural gas for resale for ultimate public consumption, and therefore the Commission erred in each and all of its findings, rulings and orders in so far as they relate to and include Canadian's production and gathering properties, facilities, operations and business. The inclusion by the Commission of Canadian's production and gathering properties, facilities and business in its determination of the various constituent elements of a rate case, including rate base, revenues, expenses and rate of return, are erroneous and invalidate the entire order of the Commission, as directed to Canadian.

B. The statement or finding on page 11 of the Opinion that Canadian's production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce, is not supported by substantial evidence.

C. The statement or finding on page 11 of the Opinion that the investigation of Canadian's production and gathering properties and operations is indispensable in regulating Canadian's rates and charges for the sale of natural gas in interstate commerce for resale and for the transportation of natural gas in interstate commerce is not supported by substantial evidence.

D. Each of said statements and findings referred to in Points 1 B and 1 C, even if true, is immaterial and erro-

neous as a matter of law, and forms no basis or justification for an assumption of jurisdiction by the Commission for rate-making purposes over Canadian's production and gathering properties, facilities, operations and business, which jurisdiction is expressly negatived and withheld in and by the Natural Gas Act.

E. In any event, the Commission erred in not limiting its rate regulatory order as to gas sold by Canadian to Colorado to a proper rate for the transportation of gas by Canadian from the end of Canadian's gathering line at Bivins Compressing Station, Texas, to the point of delivery to Colorado at Clayton Junction, New Mexico, and in adding such proper transportation charge to the fair market value of the gas at the intake side of the Bivins Compressing Station, which fair market value, under the uncontradicted evidence is 7c per Mcf and in not limiting its action in a similar manner as to gas sold and delivered by Canadian to Clayton Gas Company at Clayton, New Mexico. Such action would avoid an assumption of jurisdiction by the Commission over Canadian's production and gathering properties, facilities, operations and business, which jurisdiction is expressly withheld and negatived by the Natural Gas Act. The Commission committed error in going beyond this in its Opinion, Findings and Order.

F. As more particularly pointed out in Point No. 2 C, the Commission erred in changing the amount of compensation provided to be paid Canadian by Colorado under the contract of January 3, 1928, in so far, in any event, as such compensation includes compensation for the performance of obligations relating to production and gathering and other obligations not within the jurisdiction of the Commission.

Point No. 2.

The Commission in this case, acting beyond and in excess of any jurisdiction it may have over Canadian, has arbitrarily and capriciously, and without warrant of law, abrogated and changed the terms of the contract of January 3, 1928, between Canadian and Colorado, and particularly the amount of compensation to be paid by Colorado to Canadian as consideration for Canadian's performance under said contract, including the sale of gas and the payment therefor. In support of this point Canadian further shows:

A. The Commission erred in ordering a change in the price of gas provided to be paid Canadian by Colorado under the contract of January 3, 1928, between Canadian and Colorado, and in not finding and ruling that neither Canadian's contract with Colorado of January 3, 1928, nor the price of gas provided therein to be paid is subject to change by the Commission prior to the expiration of its term.

B. Said contract of January 3, 1928, between Canadian and Colorado obligates Canadian, among other things, to own, maintain and develop gas lands and leasehold or other interests therein and to develop, drill for, produce and gather gas therefrom. Canadian is then obligated under said contract to transport and deliver to Colorado certain quantities of the gas so produced and gathered. Canadian is prohibited from making any other sale or sales of gas or gas rights without the consent of Colorado. It can borrow money only from Colorado. Moreover, any cash received by Canadian from outside sources, whether through the sale of gas or other property; the borrowing of money, or otherwise, Canadian is obligated under said contract to credit to Colorado under said contract in reduction of the amount provided to be paid by Colorado to Canadian thereunder. The so-called purchase price to be paid Canadian under said contract of January 3, 1928, computed on the cost basis in said contract provided is the agreed compensation to Canadian for the performance of all its obligations under said contract, including the sale price of gas.

Irrespective of any general jurisdiction which the Commission might have to change the price of gas to be paid under contracts executed prior to the effective date of the Natural Gas Act, such jurisdiction does not extend to changing the compensation to be paid Canadian for the performance of its obligations under said contract of January 3, 1928, with Colorado relating to the acquisition and holding of gas lands and the drilling and development thereof and the production and gathering of gas therefrom, or for the performance of its various obligations under said contract, including its agreement not to sell gas to others or borrow money from others without the consent of Colorado and its agreement to credit on the amount of

compensation to be paid it by Colorado under said contract all moneys received by it from outside sources, whether through the sale of gas or other property, the borrowing of money, or otherwise. The necessary effect of the Commission's findings and orders in this case is an attempted extension of any jurisdiction it may have to matters not within its jurisdiction and to production and gathering, over which jurisdiction has been expressly withheld by the Natural Gas Act. The Commission, therefore, has clearly erred in changing the amount of compensation provided to be paid Canadian by Colorado under the contract of January 3, 1928, in so far in any event as such compensation includes compensation for the performance of obligations relating to production and gathering and other obligations not within the jurisdiction of the Commission.

C. Canadian's contract with Colorado of January 3, 1928, was entered into and was substantially performed long prior to the adoption of the Natural Gas Act, and under such circumstances the Commission is without power to change any of the terms, provisions or prices as specified in such contract during the life thereof, and its action in this case in so doing is error and deprives Canadian of its property in violation of the Fifth Amendment to the Constitution of the United States.

D. Even if it be assumed or held that the Commission has jurisdiction and power to change the price of gas provided to be paid under a contract negotiated, executed and substantially performed long prior to the adoption of the Natural Gas Act, and even if it be assumed that such power to change or modify the terms of a contract extends to a contract relating to production and gathering, the action of the Commission under the facts appearing in the record in this case in changing the price to be paid by Colorado to Canadian for gas delivered by Canadian to Colorado under said contract is unreasonable, capricious and arbitrary. As the evidence shows, under said contract Canadian cannot possibly make a profit from its operations, all the benefits of its operations being passed on to Colorado. It is entitled to receive only its actual costs including an amount sufficient to amortize the principal and interest of its bond and note indebtedness held by Colorado during the life of the contract. To deprive Canadian of any part of such

payments provided to be made under said contract must necessarily make it impossible for Canadian to pay its principal and interest on its bonds or to perform its other obligations under said contract necessary to produce and gather the gas which it has contracted to sell to Colorado. The necessary effect of such action will be to deprive Canadian of a substantial part of the consideration which induced it to enter into said contract and to render Canadian unable to pay principal or interest on its 6% bonds which, as shown by the evidence as of December 31, 1939, were outstanding in the principal sum of \$5,057,000, with possibility or probability of foreclosure of Canadian's properties under the trust deed securing said bonds as a result of the default which will be forced by changing the amount of the payment which Colorado by the terms of said contract is obligated to make to Canadian. In addition to this outstanding bonded indebtedness as of December 31, 1939, Canadian was indebted to Colorado at said time in the amount of \$1,384,254.14 on 6% notes sold from time to time at par for cash to finance Canadian's construction. Enforcement of the Commission's order will not only affect Canadian but also Colorado and will endanger the whole service to the ultimate consumers.

The enforcement of any order changing the contract price to be paid Canadian for its gas sold and delivered to Colorado under said contract will deprive Canadian of its property in violation of the Fifth Amendment to the Constitution of the United States.

Point No. 3.

Assuming, but not admitting, that the jurisdiction of the Commission extends to Canadian's production and gathering properties, facilities and business and to the abrogation of Canadian's contracts and that the Commission has full rate-regulatory jurisdiction over Canadian, it nevertheless clearly appears that the Commission in its determination of the rate base upon which Canadian is entitled to earn a return has committed numerous errors in violation of the Natural Gas Act which will result in the confiscation of Canadian's property and deprive it of its property in violation of the Fifth Amendment to the Constitution of the United States in the following particulars, to-wit:

A. The Commission erred in determining the rate base solely upon the basis of original cost.

B. The Commission erred in not giving any consideration to present fair value in determining Canadian's rate base, and further erred in not making any finding as to the present fair value of Canadian's properties subject to the jurisdiction of the Commission and using the amount so found as the rate base.

C. The Commission erred in rejecting Canadian's estimates of reproduction cost new less observed depreciation.

D. The Commission erred in not finding that the present market value of the gas leaseholds in the Texas Panhandle Field held by Canadian as of January, 1941, was the sum of \$15,646,784.64, and in any event in not finding that the fair value of Canadian's leaseholds in said field is largely in excess of the cost thereof as shown on Canadian's books.

E. The Commission erred in not finding that the equivalent original cost of Canadian's production and gathering facilities, as would be required for the production and gathering of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$11,811,410, and in not finding that the equivalent original cost of Canadian's transmission system, as would be required for the transmission of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$4,307,737.

F. The Commission erred in not finding that the equivalent original cost of Canadian's production and gathering facilities, as would be required for the production and gathering of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, less depreciation and depletion as of December 31, 1938, is not less than \$7,001,567, and when extended through 1947, not less than \$8,770,769, and in not finding that the equivalent original cost of Canadian's transmission system, as would be required for the transmission of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, less depreciation as of December 31, 1938, is not less than \$3,257,379, and when extended through 1947, not less than \$3,914,220.

G. The Commission erred in not finding that the total equivalent original cost of Canadian's production, gathering and transmission system for all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$16,119,147.

H. The Commission erred in allowing only the sum of \$150,738 as working capital instead of the sum of \$190,000 claimed by Canadian, and in making its working capital allowance in the same amount for all future years based upon the amount found by the Commission to be proper for the year 1939, and in not finding that the proper working capital allowance for the years 1939 to 1947, both inclusive, is as follows:

1939	\$190,000
1940	205,000
1941	220,000
1942	230,000
1943	245,000
1944	265,000
1945	275,000
1946	285,000
1947	275,000

I. The Commission erred (Op., p. 36) in finding that the probability of future additions to Canadian's properties for the years 1942 to 1947 are speculative. Such finding is not supported by substantial evidence. The Commission erred in not making findings and allowances for future property additions for the years 1942 to 1947 in the amounts for said respective years as to the production and gathering systems, as shown in Statement No. 3 of Exhibit No. 184, which statement shows necessary future property additions for said years 1942 to 1947 in the aggregate amount of \$1,009,500.

J. In its consideration and findings as to depreciation and depletion in connection with its determination of Canadian's rate base, the Commission erred, as hereinafter set forth in Point No. 5.

K. The Commission erred (Op., p. 38, Finding No. 10), in finding that Canadian's proper rate base is the sum of \$9,372,496.

L. The Commission erred in not finding that the present fair value of Canadian's property used and useful in the production, gathering and transmission of natural gas to Clayton Junction, New Mexico, extended through 1947, is not less than \$13,135,965, exclusive of working capital.

M. The Commission erred in not finding that the present fair value of Canadian's property used and useful in the production, gathering and transmission of all gas to Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$12,684,989, exclusive of working capital.

Point No. 4.

Again assuming, but without admitting, that the jurisdiction of the Commission extends to Canadian's production and gathering properties, facilities and business, and further assuming, but without admitting, that it is proper in this case to determine the rate base solely upon the basis of original cost, it nevertheless clearly appears that the Commission's findings as to original cost are erroneous and the exclusive use of original cost in the determination of the rate base is in violation of the Act and will result in confiscation of Canadian's property and deprive it of its property in violation of the Fifth Amendment to the Constitution of the United States in the following respects, to-wit:

A. The Commission erred in deducting from the original cost of Canadian's properties as of December 31, 1939, (Op., pp. 15, 46), three items aggregating the sum of \$3,370,817 upon the ground that said items constitute affiliated company profits, the first item being an alleged profit of \$3,120,496 on the sale of property by Amarillo Oil Company to Canadian; the second item being an alleged profit of \$121,787 on the sale of property by Master Oil and Gas Company to Canadian; and the third item being an alleged profit of \$128,534 on the sale of property by Mission Oil Company to Canadian through Amarillo Oil Company. The Commission's findings with reference to these items are not supported by substantial evidence and are contrary to the evidence and the law, and each of said items should properly be included in the rate base.

B. The Commission erred in not properly or adequately setting up the facts appearing in the record showing the circumstances under which the item of \$5,000,000 was paid by Canadian to Amarillo Oil Company for certain gas leaseholds and wells, and in not finding the following, namely: that when Canadian acquired its original gas leaseholds and wells from Amarillo Oil Company as of May 1, 1927, it actually paid therefor the sum of \$5,000,000 in cash; which sum was actually advanced by Standard Oil Company (N. J.) pursuant to a contract, dated April 5, 1927, between Standard Oil Company (N. J.), Southwestern Development Company, and Cities Service Company; that the contract of April 5, 1927, between Standard Oil Company (N. J.), Southwestern Development Company, and Cities Service Company, pursuant to which Standard Oil Company (N. J.) advanced to Canadian the sum of \$5,000,000 which Canadian used to purchase gas leaseholds and wells from Amarillo Oil Company, was executed only as the result of prolonged arm's-length negotiations and individual bargaining between adverse parties, Standard Oil Company (N. J.) and Southwestern Development Company; that said transaction was not an inter-company transaction between affiliated companies and should not be so treated, because, first, its terms were negotiated at arm's length and agreed upon by adverse parties; second, it was not a book transaction, since the purchase price was actually advanced and paid in dollars by a company which was outside the Southwestern's holding company system; third, no contingency whatever could arise in the future which would affect the right of Amarillo Oil Company to keep and retain the full purchase price; and fourth, under these circumstances all accepted rules of accounting require that the full purchase price paid by Canadian be treated as its cost. Said full sum of \$5,000,000 was actually invested in and went into this project. It was new money and came from an entirely outside source. To secure this \$5,000,000, plus an additional \$6,000,000, it was necessary for Canadian to issue its \$11,000,000 of bonds. The payment of this \$5,000,000 of new money was an essential to the inauguration and consummation of the project. The transaction was actual, bona fide, complete and final between the parties. The Commission erred in not making findings in accordance with each and all of

the above statements. The Commission erred in not finding that the entire sum of \$5,000,000 paid by Canadian to Amarillo Oil Company for said original leaseholds and wells was a fair and reasonable price therefor and was actually paid therefor, and in eliminating the sum of \$3,120,496 therefrom, and in finding that said sum of \$3,120,496 constituted a write-up, and in not finding that said entire sum should be included in Canadian's original cost.

C. The Commission erred in basing its elimination of the \$3,120,496 upon the express or implied finding or assumption that the gas leaseholds and wells purchased with the \$5,000,000 had prior to the time of such purchase been devoted to a public service and in not finding that in any event said properties had not been devoted to any public service until after the same had been purchased by Canadian.

D. The Commission erred in deducting from and not including in Canadian's original cost the item of \$421,787 found by the Commission to be an alleged profit on the sale of property by Master Oil and Gas Company to Canadian, and in finding that this item represents a profit among affiliated companies. The Commission erred in finding that this Master Oil and Gas Company property had been devoted to a public service before the time Canadian acquired it. It erred in not finding that the sale by Master Oil and Gas Company to Canadian was negotiated at arm's length; that the purchase price was not exorbitant or in anywise unreasonable, and that the full purchase price for said property should be a part of Canadian's original cost.

E. The Commission erred in deducting from and not including in Canadian's original cost (Op., pp. 15-16) the item of \$128,534 found by the Commission to be an alleged profit on the sale of property by Mission Oil Company to Canadian through Amarillo Oil Company upon the alleged ground that said payment constitutes a write-up and represents a price paid for properties not at arm's length which exceeded the original cost to the party first devoting them to the public service. Said finding (Op., p. 17) is not supported by any substantial evidence.

With further reference to the transaction referred to in

this Point, the Commission erred in not making any preliminary or basic findings of fact showing the items making up said aggregate item of \$128,534 so that Canadian could properly direct specifications of error to the elimination of the different items aggregating said sum of \$128,534.

In an attempt to ascertain the preliminary, primary or basic facts and figures upon which the Commission's ultimate findings as to this item and as to other matters are based, Canadian, as appears in Specification of Error No. 132 in its Petition for Rehearing and to Reopen filed with the Commission, requested a conference with the representatives of the Commission and the privilege of examining the Commission's working papers used in making the computations set forth in the Commission's findings, all for the purpose of attempting to ascertain the underlying facts or computations upon which the Commission's ultimate findings or computations were based. This request the Commission denied on April 1, 1942, and, in so doing, erred.

If, as Canadian believes, there is included in this elimination of \$128,534 the sum of \$51,839.04 representing the cost of the drilling of an exploratory well (Bivins 2) over 20 years ago which resulted in a dry hole, then the Commission erred in making such elimination.

If, as Canadian believes, the remaining portion of said sum of \$128,534 eliminated by the Commission from Canadian's original cost, namely, the sum of \$76,695, is eliminated by the Commission upon the ground that it represents an excess of original cost to the party first devoting the property to the public service, then the Commission erred in that said conclusion is not based upon any adequate finding and is not based upon substantial evidence in the record, and is contrary to law. The Commission erred in not finding that said purchase was made prior to the time that the property so purchased could possibly be said to have been first devoted to the public service, and the Commission erred in not finding that said sum is reflected in a sum actually paid by Canadian to Amarillo Oil Company for the property.

F. The Commission erred (Op., p. 15) in deducting from and not including in original cost of Canadian's properties

the item of \$129,032 which the Commission has deducted upon the ground that said item represents reaccounting and not a correction of an accounting error. The finding of the Commission that the placing of said sum by Canadian in its capital account represents reaccounting, and not correction of an accounting error is not supported by substantial evidence. The Commission erred in not finding that said sum is properly placed in capital as a part of the actual legitimate cost of Canadian's property.

G. The Commission erred in deducting from and not including in Canadian's original cost (Op., pp. 15-17) the item of \$366,507 representing interest during construction and in finding that any part of said sum represents interest upon "write-ups." Said finding is not supported by substantial evidence.

H. The Commission erred in not finding that the original cost and the actual legitimate cost of Canadian's properties for its production and gathering facilities as of December 31, 1939 is not less than the sum of \$10,620,625, and in not finding that the original cost and the actual legitimate cost of Canadian's transmission system properties as of December 31, 1939, is not less than the sum of \$4,028,196.

I. The Commission erred in finding the undepreciated original cost of Canadian's property (Op., p. 14 and Finding No. 4) as of December 31, 1939, to be \$10,784,464. The Commission's finding to that effect is not supported by substantial evidence.

J. If it shall be finally held that the Commission has jurisdiction for rate-making purposes over all of Canadian's properties, including its production and gathering facilities, and if it shall be further finally held that the rate base is to be based upon original cost or actual legitimate cost, then the Commission erred in not finding that the total original cost or actual legitimate cost of Canadian's production, gathering and transmission properties, extended through 1947, is \$16,626,957, and in not using said sum in computing Canadian's rate base.

Point No. 5.

The Commission misconstrued the Natural Gas Act, particularly Section 6 (a) thereof, which requires it to determine with respect to depreciable property for rate-making purposes "the depreciation therein." In its consideration and findings as to depreciation and depletion in arriving at its rate base for Canadian's properties the Commission erred in deducting on account of depreciation the amount of a hypothetical and synthetic reserve for such depreciation constructed by the Commission for that purpose; erred in not ascertaining in respect to depreciable property "the depreciation therein," as required by Section 6 (a) of the Act; and erred in rejecting the uncontradicted evidence of Petitioner showing the actual depreciation in such property. This error of the Commission deprives Canadian of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States. Under this Point Canadian further shows:

A. The Commission erred (Op., pp. 24-27) in ignoring and rejecting observed per cent condition of Canadian's depreciable property in determining the existing depreciation in said property as of December 31, 1939.

B. The Commission erred in not finding from the uncontradicted evidence in this case that, based upon actual observation and inspection of the present condition of Canadian's depreciable property, the percentage of accumulated depreciation and the percentage of condition of the depreciable properties of Canadian were, as of December 31, 1938, as set forth in Canadian's request for Finding of Fact No. 82 heretofore filed with the Commission as follows:

Description	Accumulated Depreciation Per Cent	Condition of Properties Per Cent
Land	0%	100%
Right of Ways	0%	100%
Drilling and Cleaning Equipment	0%	100%
Field Measuring Station Structures	17%	83%
Measuring Station Equipment (Field and Transmission)	11%	89%
Field Lines	7%	93%
Field Compressor Station Structures	18%	82%
Field Compressor Station Equip- ment	16%	84%
General Property	99%	78%
Compressor Station Structures	10%	90%
Compressor Station Equipment	17%	83%
Transmission Line Equipment	7%	93%
Other Transmission System Struc- tures	19%	81%
Other Transmission System Equip- ment	18%	82%
Measuring Station Structures (Transmission)	11%	89%
Gasoline Plant Structures	15%	85%
Gasoline Plant Equipment	27%	73%
Telephone System Equipment	16%	84%

C. The Commission erred in not applying the percentages of depreciation set forth in Subdivision B of this Point No. 5 in determining the accrued or accumulated depreciation in Canadian's property, as required by Section 6(a) of the Act.

D. The Commission erred in finding the accrued depreciation as of December 31, 1939, on Canadian's depreciable property to be \$1,480,948.

E. The Commission erred in finding that the accrued depletion of Canadian's properties as of December 31, 1939, is the sum of \$653,681.

F. The Commission erred in finding that the total ac-

erred depletion and depreciation in Canadian's properties as of December 31, 1939, is the sum of \$2,134,269.

Point No. 6:

In addition to errors hereinafter in Points Nos. 7 and 8 set forth relating to depreciation and depletion as an annual expense allowance, the Commission erred with reference to its findings and determination of Canadian's annual expense which should properly be considered in estimating Canadian's annual expense for the future in the following respects, to wit:

A. The Commission erred (Op., p. 42), in not setting forth and making a finding as to each of the deductions from Canadian's 1939 expense suggested by the Commission's staff and allowed by the Commission and found by the Commission to be reasonable. Canadian is absolutely unable, from the Commission's Opinion, to determine the items of its 1939 expense which the Commission has disallowed and cannot reconcile the total expense deductions made by the Commission with the adjustments made by the Commission's staff in exhibits introduced in evidence. Consequently, Canadian could not, and was deprived of the right to, direct proper specifications of error to the deductions from expenses made by the Commission and to the different items of deduction aggregating the total deduction made by the Commission. As pointed out in Subparagraph E of Point No. 4, within a few days after copy of the Commission's Order and Opinion of March 18, 1942, was received, Canadian, in an attempt to ascertain the preliminary, primary or basic facts and figures which are not set forth in the Commission's Opinion but upon which the Commission's order reducing rates must necessarily be based, requested a conference with representatives of the Commission and permission to examine the working papers used by the Commission in making its computations. This request the Commission promptly, and on March 30, 1942, denied. (See Specification No. 132, Petition for Rehearing filed with the Commission.) The failure of the Commission to make proper findings as to the expense deductions so made and the failure of the Commission to correct said

error by its denial of Canadian's request for a conference and examination of working papers are error and deprive Canadian of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

B. In view of the evidence in the record and the common knowledge of the ascending trend in expense occasioned, first, by the defense program and, lastly, by war conditions, all of which was called to the attention of the Commission in Canadian's briefs filed with the Commission and in Canadian's Petition to Reopen, dated March 10, 1942, the Commission erred in basing its expense allowance for the future upon Canadian's expense for the pre-war year of 1939. It particularly erred in allowing as tax expense only the sum of \$177,162 and in allowing income taxes as a deductible expense in the amount only of \$66,403 based upon its findings as to income tax for the pre-war year of 1939. Said allowance for income tax expense is excessively low even if such allowance should properly be based upon the pre-war year of 1939. Furthermore, it is entirely improper to base such income tax expense allowance upon the pre-war year of 1939 when the income tax rate was only 16.5% as against a 24% rate for the year 1940 and as against the almost certain increase of the tax rate to 40% now being discussed in Congress. The findings upon which such allowances are based are not supported by substantial evidence. To allow Canadian for the future as an expense item only the amount of taxes paid in the pre-war year of 1939 and to ignore the increased rates of taxation, particularly in income taxes, which have become effective since the pre-war year of 1939 and the certain further increase in such taxes, which increases, together with further increases, will be of indefinite duration, and all of which increases the Commission recognized and, which likewise will be judicially noticed by this Court, constitute error and necessarily deprive Canadian of its property in violation of the Fifth Amendment to the Constitution of the United States.

C. The Commission erred (Op., p. 44) in allowing as operating expense only the sum of \$753,191.

Point No. 7.

In its findings and rulings relating to depreciation and depletion as an annual expense allowance the Commission committed error as follows:

A. The Commission erred, under the facts and circumstances appearing in this case in using the service life principle for the purpose of determining annual depreciation expense.

B. The Commission erred (Op., pp. 33, 34) in not stating and finding what service lives it has used in applying the service life principle to annual depreciation expense. It is impossible, from Commission's Opinion, for Canadian to know what service lives have been used so that it could properly direct specifications of error thereto.

C. The Commission erred under the facts and circumstances appearing in this case in using the service life principle for the purpose of determining future annual depreciation expense, which principle as applied by the Commission, erroneously assumes that the allowance, which was approximately 2% per annum on depreciable items, when applied up to the very date that the property is exhausted and theoretically will go out of service, will return the full investment in the property. This does not square with the realities. The property cannot be operated to the very date of exhaustion without the expenditure of large sums of money for the purpose of making replacements, betterments and rehabilitations of the property before the date of total exhaustion has been reached. The Commission has made no provision for these actualities; and in failing to do so, committed error.

D. The Commission erred in not determining and finding that the depreciation and depletion period to be used in determining Canadian's depreciation as an annual expense allowance should start in the year 1939, or such later commencement date as should properly be used in establishing the depreciation base, and end in the year 1947 inasmuch as the primary term of Canadian's contract with Colorado expires in 1947 the contract between Colorado and the Public Service Company of Colorado expires in the

year 1948, and the franchise of the Public Service Company of Colorado in the City of Denver expires in the year 1947, with the Public Service Company of Colorado not obligated to take gas after the expiration of its franchise on February 8, 1947, unless, in the meantime, the people of Denver shall have voted a new or extended franchise, and the contract between Colorado and Natural Gas Pipe Line expires September 30, 1946.

E. In any event, the Commission erred in not finding that the longest period which should properly be used in determining Canadian's annual depreciation and depletion allowance is the 18-year period starting in 1939 and terminating at the end of the year 1956, when the life of Canadian's gas reserves for long distance pipe line purposes will expire. In any event, whatever starting point is used for such depreciation and depletion period, the Commission erred in finding that the ending point should be later than the year 1956.

F. The Commission erred in finding that Canadian's depletion expense for the year 1939 was the sum of \$80,969.

G. The Commission erred in finding that Canadian's depreciation expense for the year 1939 was the sum of \$157,774.

H. The Commission erred in not finding that the salvage value of Canadian's depreciable properties would be "nominal," as testified by the Commission's witnesses, and would be a maximum of \$198,384.69, as testified by Canadian's witnesses.

I. The Commission erred in not basing its annual depreciation and depletion expense upon the present fair value of Canadian's properties.

J. The Commission erred in any event in its computation of depletion allowances because it assumes that Canadian will recover all of the gas currently under its acreage as determined by the Commission, whereas all of the substantial evidence in this case points to the fact that it will not do so.

K. The Commission has made a finding that the life of

Canadian's gas reserves will continue for 53 years from December 31, 1939, or until the year 1992, as against the contention of Canadian that the life of Canadian's gas reserves for long distance pipe line purposes will not continue beyond the year 1956. This obviously has an important bearing as to the rate of depreciation and depletion to be used in determining proper depreciation and depletion allowances as annual expense. Due to the number of errors made by the Commission with reference to the life of Canadian's gas reserves we are setting them out in Point No. 8 next following.

Point No. 8.

The Commission, in this case, has arbitrarily and capriciously, and without substantial basis in the record, determined that the life of Canadian's gas reserves will continue for 53 years from December 31, 1939. As a basis for such determination the Commission has assumed a reserve figure for Canadian's acreage, which assumption is not supported by the record in view of the fact that the Commission discarded the reserve estimates of its own witnesses upon the ground that they were too high, and of Canadian's witnesses upon the ground that they were too low, which conclusions, if correct, would leave the record without any substantial evidence of any character whatsoever with respect to the volume of gas in place under Canadian's reserves, or in the field as a whole. The Commission then committed further error by simply dividing the arbitrary figure thus assumed by an estimated annual rate of withdrawal from Canadian's acreage without giving any effect whatsoever to the volume of gas that Canadian will necessarily lose by underground migration, all of the substantial evidence being to the effect that Canadian will lose large volumes of gas by drainage, and the evidence being uncontradicted that the entire Texas Panhandle gas field is interconnected by a system of porous spaces so that gas will migrate freely from one portion to the other. In support of this Point Canadian further shows:

A. The Commission erred in its finding that the life of Canadian's reserves would continue for 53 years from December 31, 1939 (Opp. p. 31), because there is no substantial evidence that will support such finding.

B. As stated by the Commission in that portion of its opinion under the heading "Gas Reserves" (Op., pp. 27-33) the Commission witnesses based their testimony as to reserves upon the "pressure decline" method, whereas Canadian's witnesses based their testimony upon the "porosity sand thickness" method or "open flow" method. The Commission states in its opinion (Op., pp. 28-29) that the estimates of Commission staff, resulting from an application of the "pressure decline" method are too high and that Canadian's estimates, based upon applications of the "porosity sand thickness" or "open flow" methods, are too low, thereby condemning all methods as applied to the Texas Panhandle Field and rejecting the estimates both of Commission staff witnesses and Canadian's witnesses. Notwithstanding this, the Commission has made a purported finding as to Canadian's recoverable reserves. It is obvious that such findings is necessarily the arbitrary conclusion only of the Commission and is not supported by any substantial evidence in the case. The Commission erred in not basing its finding upon any evidence in the case and in making the finding that Canadian's recoverable reserves as of December 31, 1939, were 2,800,000,000 Mcf at 14.65 pound pressure base and at an assumed abandonment pressure of 50 pounds (Op., p. 31).

C. The Commission erred in holding that the method used by the Commission staff in dividing the entire field into quadrants favored the position of Canadian as to lower reserves, there being absolutely no substantial testimony to this effect and this finding, therefore, is a mere conclusion not even remotely supported by the record (Op., p. 30).

D. The Commission erred in making the statement that the method used by Commission staff of dividing the entire field into quadrants favored the position of Canadian as to lower reserves and in stating in effect that this was true because (1) "Canadian's acreage is "considered among the very best in the entire field," (Op., p. 30) and (2) that the Commission staff had arrived "at an average of 15,400 Mcf of remaining reserves per acre (for the field as a whole) as compared with only 11,600 Mcf of remaining re-

serves per acre under Canadian's acreage (Op., p. 30). These findings are erroneous and are not supported by the record because the only testimony on these questions by the Commission staff shows an estimate for Canadian's reserves of 16,343 Mcf per acre, which is considerably higher than the estimate per acre for the field as a whole (see Hammer's Exhibit 180, page 4 of 4), and for the further reason that there is no substantial evidence whatsoever in the record to the effect that Canadian's acreage is among the most productive in the field, the evidence on this subject being merely that it is well blocked and among the most desirable acreage for this reason.

E. The Commission erred in holding that "the pressure decline method, theoretically, automatically accounts for any migration" (Op., p. 30) for the reason that there is no substantial evidence in the record to support any such finding with respect to migration that may occur in the future. It is undisputed in this record that the life of any acreage is determined by production and drainage in the future, and past drainage in any event has very little bearing upon this fact.

F. The Commission erred in its finding that "if isobaric maps are properly drawn this factor (drainage) is accounted for" (Op., p. 30) because there is absolutely no evidence in the record to support the statement that isobaric maps represent in any manner the drainage that may occur in the future.

G. The Commission erred in failing to find that Canadian would lose proportionately more gas in the future from drainage than it had lost in the past, since the uncontradicted testimony in this case demonstrated that this would be true because of the increased rate of production from lands adjacent to the acreage of Canadian coupled with the fact that the record shows without contradiction and based upon figures and studies furnished by Commission staff that it was not until midyear 1938 that adjacent acreage had produced as much gas in volume as Canadian's acreage and, further, that during the last year covered by the study of Commission staff only about half as much gas was produced from Canadian's acreage for

each acre pound lost in pressure as was produced for each acre pound lost in pressure during the first year covered by the study of Commission staff. The record is clear and uncontradicted in this respect.

H. The Commission erred in the determination of the life of Canadian's reserves by merely dividing its expected future annual rate of production into remaining recoverable reserves as found by it (Op., p. 31) because such method of computation necessarily assumes, in spite of the uncontradicted testimony to the contrary, that Canadian will produce every foot of gas found by the Commission to remain in place under its acreage as of the date of the computation, notwithstanding the fact that there is no substantial evidence to support this assumption, but on the contrary, the uncontradicted evidence in this case demonstrated that a computation of this character, which did not take the drainage into account, would give an erroneous answer.

I. The Commission erred in not considering the influence of drainage upon the life of Canadian's reserves because the overwhelming weight of the testimony shows that Canadian will lose far more gas by drainage than it will actually produce through its wells, there being no substantial evidence to the contrary.

J. The Commission erred in its finding that the life of Canadian's properties would be influenced by the life of the Hugoton Field (Op., p. 32), for the reason that the evidence shows affirmatively and without contradiction that Canadian has no reserves in the Hugoton Field and there is no showing that it is possible for Canadian either to acquire reserves in that field or purchase gas therein and finally, even if Canadian could rely upon the Hugoton Field as a source of supply it would be necessary for it to make larger additional capital expenditures, none of which are provided for in the rate base or anticipated by the Commission with respect to Canadian's future operations.

K. The Commission erred in failing to find that the life of Canadian's reserves depended upon and would be the same as the life of the field as a whole, this being the testimony of all of the witnesses who testified concerning

this matter and there being no substantial evidence to the contrary, all of the testimony being that the Texas Panhandle Field is interconnected by means of porous spaces and that production of gas from any point in the reservoir will affect the entire reservoir, and all of the witnesses also testified to the fundamental law of physics that gas under pressure will migrate from areas of higher pressure to areas of lower pressure in the process of equalization of pressures.

L. The Commission erred in failing to make any finding as to the total recoverable reserves of the Texas Panhandle Field and to recognize the necessity for such finding in order to arrive at a proper finding of the remaining life of Canadian's recoverable reserves.

M. The Commission erred in failing to find the remaining life of the Texas Panhandle Field as a whole.

N. The Commission erred in failing to find that from January 1, 1941, to the end of 1956, there will be withdrawn from the Texas Panhandle Field a total of 9,055,029,223 Mcf of gas computed on a 16.4 pound pressure base.

O. The Commission erred in failing to find that the remaining life of the Texas Panhandle Gas Field as a source of supply for long distance pipe lines will not extend beyond the end of 1956.

P. The Commission erred in failing to find that the remaining life of Canadian's reserves as a source of supply for long distance pipe lines will not extend beyond the end of 1956, there being no substantial evidence to the contrary.

Q. The Commission erred in failing to find that the determination of average pressures in the Texas Panhandle Field by weighting on acreage alone does not give the correct equilibrium pressure, all of the substantial testimony in this case being to this effect.

R. The Commission erred in failing to find that the pressure decline method of estimating gas reserves in the Texas Panhandle Field gives an erroneously high answer

in the absence of the true equilibrium pressure, all of the substantial testimony in the case being to this effect.

S. The Commission erred in failing to find that the average pressure in the Texas Panhandle Field, determined by weighting on acreage alone, shows an accelerated drop in pressure from year to year as related to production, all of the substantial testimony in the case being to this effect.

T. The Commission erred in failing to find that the average pressure of Canadian's reserves, determined by weighting on acreage alone, shows an accelerated drop in pressure from year to year as related to production, all of the substantial evidence being to this effect.

U. The Commission erred in failing to find that any estimate of reserves in the Texas Panhandle Field, based upon the pressure decline method, is erroneously high, when the accelerated drop in pressure from year to year, as related to production, is ignored, the overwhelming weight of the testimony being to this effect and any contrary testimony, by inference or otherwise, is directly in conflict with the fundamental law of physics known as Boyle's Law.

V. The Commission erred in applying the pressure decline method to Canadian's acreage in any event for the purpose of determining the remaining recoverable reserves in place in view of its finding in this case to the effect that the pressure decline method of estimating reserves is satisfactory when "a field is depleted as much as 15% or more" (Op., p. 29), all of the testimony in this case being to the effect that at the time of the hearing and at the time the estimates of reserves were made Canadian's reserves had been depleted less than 10%.

Point No. 9.

The Commission erred in its findings as to Canadian's total operating costs, the proper amount of revenue deductions, and the amount of income available for return, in that

A. The Commission erred (Op., p. 44) in allowing

total revenue deductions only in the aggregate amount of \$1,169,096.

B. The Commission erred (Op., p. 44) in finding that Canadian will have \$1,224,291 income available for return based upon 1939.

C. The Commission erred in not finding that the reasonable estimated total operating costs of Canadian for the years 1940 to 1947, both inclusive, are not less than the following:

1940	\$2,269,903
1941	2,166,294
1942	2,192,137
1943	2,246,717
1944	2,262,385
1945	2,254,260
1946	2,219,333
1947	2,043,837

D. The Commission erred in not finding that the reasonable estimated total operating costs of Canadian for the years 1940 to 1947, both inclusive, excluding Colorado's direct sale gas, are not less than the following:

1940	\$2,194,419
1941	2,071,007
1942	2,075,867
1943	2,151,539
1944	2,200,274
1945	2,192,740
1946	2,160,467
1947	1,988,261

Point No. 10.

As a fair rate of return the Commission erred in finding and allowing only $6\frac{1}{2}\%$, and erred in finding that a rate of return of $6\frac{1}{2}\%$ is fair and reasonable as applied to the properties and business of Canadian, and erred in not finding that a $6\frac{1}{2}\%$ rate of return under all of the evidence in this case will necessitate rates for gas sold by Canadian that are confiscatory and lower than the lowest reasonable rate, and erred in not finding that a rate of return of at least 8% is the lowest reasonable rate.

In any event, the Commission erred in applying the 6½% rate to all of Canadian's properties and business, including both its regulated and unregulated business. The findings of the Commission are not supported by substantial evidence, and these errors deprive Canadian of its property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

Point No. 11.

It being conceded that the jurisdiction of the Commission does not in any event extend to all the gas sold by Canadian, it admittedly becomes necessary to make some proper allocation so as to keep the rate order within the limited confines of the Commission's jurisdiction. The Commission recognized the necessity for such allocation, but in doing so erroneously rejected Canadian's theory as to a proper basis of allocation and the evidence in support thereof, and erroneously adopted and applied a theory designated by the Commission as "Allocation of Costs." (Op., pp. 53-62.) In this connection the Commission erred in the following respects:

A. The Commission has purported to make an allocation which it calls an "Allocation of Costs." There are no sufficient preliminary findings of fact based upon evidence in the case and there is no sufficient explanation of what the Commission means by its "Allocation of Costs" and how it has applied this theory to enable Canadian properly to direct specifications of error to the general statements and findings made in this portion of the Commission's Opinion. As heretofore pointed out in Subparagraph E of Point No. 4 and Subparagraph A of Point No. 6, Canadian, in an attempt to ascertain the preliminary, primary or basic facts and figures which are not set forth in the Commission's Opinion but upon which the Commission's order reducing rates must necessarily be based, requested a conference with representatives of the Commission and permission to examine the working papers used by the Commission in making its computations. This request was promptly denied by the Commission. The failure of the Commission to make such proper preliminary findings and explanation of its "Allocation of Costs"

theory so as to enable Canadian properly to direct specifications of error thereto and the failure of the Commission to correct said error by its denial of Canadian's request for a conference and examination of working papers deprive Canadian of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

B. The Commission erred (Op., p. 55) in finding that an allocation of physical property need not be made in arriving at a proper determination of rates for the sale of gas within the jurisdiction of the Commission, and in not making such allocation; and the Commission, in rejection of the uncontradicted evidence in the case, further erred in not making such physical allocation in accordance with the allocation exhibits introduced through Canadian's witnesses.

C. The Commission erred in not finding a rate base for that part of Canadian's property subject to the rate-regulatory jurisdiction of the Commission.

D. The Commission erred in not finding a rate base for that part of Canadian's property subject to the rate-regulatory jurisdiction of the Commission and then making an allocation of the physical properties and other values included in such rate base as between the portion or value thereof properly applicable to the gas over which the Commission has rate-regulatory jurisdiction and the portion of said gas over which the Commission does not have such rate-regulatory jurisdiction.

E. The Commission erred (Op., p. 55) in stating that Canadian did not submit in evidence a complete presentation of its entire operations broken down between jurisdictional and non-jurisdictional operations.

F. The Commission erred (Op., p. 55) in stating that all that can be accomplished by an allocation of physical properties can be attained by allocating costs, including the return.

G. The Commission erred (Op., p. 55) in stating that the cost allocation method adopted by its staff is by far the most practicable and business-like. Said method is not practicable or business-like, is contrary to law, and its

necessary effect is an assumption of jurisdiction by the Commission over properties, incomes and expenses over which it has no jurisdiction.

H. The Commission erred (Op., p. 56) in stating that Canadian's allocation evidence assumed a field price for gas as the prevailing market price. This statement is not supported by substantial evidence. The uncontradicted evidence in the case established the prevailing market price for said gas which was used by Canadian in its allocation exhibit.

I. The Commission erred (Op., p. 56) in stating that Canadian's evidence was based upon assumptions, without stating what those assumptions were, which are referred to by the Commission, and the Commission erred in stating that Canadian's exhibits do not square with realities or are patently unreasonable as applied to properties and operating conditions such as those concerned. None of said statements is supported by substantial evidence.

J. The Commission erred (Op., p. 56) in stating that the Commission's staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted. Said statement is not supported by substantial evidence and its application in this case is contrary to law and to the facts of the case and will necessarily result in depriving Canadian of its property without due process of law.

K. The Commission erred (Op., p. 56) in not showing what "peak day demand" it refers to as the basis of the allocation of fixed costs.

L. In any event, the Commission erred in basing its cost allocation on a "peak day demand" in one year only, to wit, the year 1939.

M. The Commission erred in not recognizing and finding that the costs for the production and transmission of gas depend primarily upon load factor rather than volume.

N. The Commission erred (Op., p. 56) in not making a finding as to the amounts used by the Commission as

fixed costs and the amounts used as variable costs, and the items thereof.

O. The Commission erred (Op., p. 57) in finding that the principles and methods of cost allocation presented by the Commission's staff are the most appropriate and reasonable for Canadian. Such finding is not supported by substantial evidence.

P. Assuming that the Commission used the allocation formula set up in Lyons' Exhibits Nos. 226 and 226-A, then it erred in accepting the allocation exhibit which it has adopted because the allocation of transmission line cost between volumetric costs and capacity costs have been made in a manner that is arbitrary and discriminatory in that volumetric costs have been increased and capacity costs decreased, thereby favoring or minimizing the costs charged to resale gas.

Q. The Commission erred in the allocation of transmission line capacity costs, particularly with reference to fixed charges and return on the investment. Failure to make property allocations on which to base return and depreciation charges lead only to incorrect, arbitrary and discriminatory allocations of costs.

R. Again assuming that the Commission used the allocation formula set up in Lyons' Exhibits Nos. 226 and 226-A, then it erred in adopting said allocation exhibits because the allocation of that portion of transmission line costs alleged to apply to capacity costs has been improperly allocated as between resale and direct sale gas. The percentage distribution used applies only to that portion of the property situated at and immediately north of Bivins Compressing Station, whereas the main line has at least four different ratios that should have been used.

S. Again assuming that the Commission used the allocation formula set up in Lyons' Exhibits Nos. 226 and 226-A, then it erred in the adoption of said allocation exhibits because no weight was given therein to the distance the gas is transported from the field to the several customers and the number of times the gas must be handled or compressed before arriving at its destination,

T. The Commission erred in making any findings as to cost allocations based upon Exhibits submitted by Commission's staff for the reason that none of such exhibits purported to make any cost allocation with respect to regulated and unregulated business, and therefore afforded no basis for allocation of costs with respect to regulated and unregulated business.

U. The Commission erred in making any findings as to cost allocations based upon exhibits submitted by Commission's staff for the reason that none of such exhibits took into account the service preference provided by contract which domestic and commercial gas has over industrial gas, and particularly direct sales gas.

V. The Commission erred in making any findings as to cost allocations based upon exhibits submitted by Commission's staff for the reason that such exhibits do not take into account the service preference which regulated gas sales have over the sales of unregulated gas, which service preference is provided by contract.

W. The Commission erred in making each and all of the allocations applicable to Canadian set forth on page 57 of its Opinion.

X. If the Commission is correct in its finding that Canadian and Colorado operations comprise a single operating system (Op., p. 11), then the Commission erred in ordering a total reduction of \$551,000 in the price of gas to be paid by Colorado to Canadian in that said reduction applies to all gas sold by Canadian to Colorado, the record showing without question that approximately 25% of gas sold by Canadian to Colorado is direct sale gas and is not subject to the jurisdiction of the Commission. In that event there should be no reduction in Canadian's contract prices with respect to the volume of gas that is not sold by Colorado for resale.

Point No. 12.

The Commission erred in finding that Canadian's rates and charges under its contracts with Colorado and Clayton Gas Company heretofore filed with the Commission and

referred to by the Commission as FPC Rate Schedules Nos. 1 and 2 are unjust and unreasonable, and in not finding that said rates and charges are just and reasonable. In this connection, and in addition to each and all of the other errors and matters hereinabove set forth, Canadian shows:

A. Said contract of January 3, 1928, between Canadian and Colorado was the result of prolonged arm's-length private negotiations and individual bargaining between adverse parties, and the Commission erred in not so finding. There is no substantial evidence in the record to support any different finding or conclusion.

B. The finding of the Commission that the rates and charges under said contract of January 3, 1928 between Canadian and Colorado are unjust and unreasonable is unsupported by any substantial evidence and is erroneous. That said rates and charges are just and reasonable under the uncontradicted evidence in the case is further established by the facts set forth in Point 2 B, 2 C, and 2 D, supra, which points by this reference are hereby incorporated herein in support of this Point No. 12.

C. The Commission erred in not finding that the prevailing market value of gas in its natural state at the well-head in the Texas Panhandle Gas Field, including Canadian's portion thereof, is 4c per Mcf on a 16.4-pound pressure base.

D. The Commission erred in not finding that the prevailing market value of gas in its natural state at the intake side of the Bivins Compressing Station is 7c per Mcf on a 16.4-pound pressure base.

E. The Commission erred in not finding that the reasonable transportation cost per Mcf of transporting natural gas from the intake side of Bivins Compressing Station to Clayton Junction, New Mexico, for the different years 1939 to 1947, inclusive, is as follows:

1939	3.29c
1940	3.85c
1941	3.70c
1942	3.63c
1943	3.96c
1944	4.04c
1945	4.09c
1946	4.24c
1947	4.42c

F. The Commission erred in not finding that the estimated volume of gas to be delivered at Clayton Junction, New Mexico by Canadian to Colorado for the years 1939 to 1947, both inclusive, and the total and Mcf cost of said gas computed under the contract of January 3, 1928, between Canadian and Colorado and the total cost of Mcf cost of said volumes of gas using a 7-cent market value of said gas at the intake side of Bivins compressing station, plus a reasonable transportation cost therefrom to Clayton Junction, New Mexico, are as follows:

Volume (Mcf delivered at Clayton Junction, N. M.) Mcf	Contract Cost of all gas delivered at Clay- ton Junction, N. M.		Cost of all gas deliver- ed at Clayton Junction, N. M., using 7c market value at Bivins intake plus transportation to Clayton Junction	
	Amount	Per Mcf.	Amount	Per Mcf.
1939	18,377,500	\$1,221,008	6.64c	\$1,891,022 10.29c
1940	18,830,659	1,323,494	7.03c	2,043,286 10.85c
1941	20,345,148	1,293,088	6.35c	2,176,464 10.70c
1942	20,807,395	1,238,270	5.95c	2,211,063 10.63c
1943	20,915,828	1,244,759	5.95c	2,293,108 10.96c
1944	21,343,807	1,207,771	5.66c	2,355,481 11.04c
1945	21,767,854	1,175,875	5.40c	2,415,251 11.09c
1946	21,767,854	1,232,651	5.66c	2,447,015 11.24c
1947	21,767,854	1,733,845	7.97c	2,486,168 11.42c

G. The Commission erred in not finding that the price of gas to be delivered to Colorado at Clayton Junction, New Mexico, provided to be paid Canadian under its contract of January 3, 1928, is less than the prevailing market value for said gas at the intake side of the Bivins compressing station before the extraction of natural gas-

line, plus a fair charge for transporting said gas between the intake side of said Bivins compressing station and Clayton Junction, New Mexico.

H. The Commission erred in finding (Op., p. 58) that Canadian's revenues from sales exceed costs by \$561,000.

I. The Commission erred in finding that it should require Canadian to reduce its rates and charges by the amount of \$561,000, or any other amount.

Point No. 13.

With reference to the formal "Order Reducing Rates Canadian River Gas Company" entered by the Commission under date of March 18, 1942, and the 14 formal findings of fact contained therein, as amended by the Supplemental Order, dated April 22, 1942, and the order of the Commission denying Canadian's Petition for Rehearing and to Reopen, because of each and all of the matters and things hereinabove set forth, Canadian states and shows that the Commission erred as follows:

A. The Commission erred in making Finding No. (1) in so far as it finds that Canadian owns and operates facilities for the production and gathering of natural gas in interstate commerce.

B. The Commission erred in making Finding No. (2) in so far as it finds that the entire system from the Texas Panhandle Field to Denver is operated as a single property.

C. As to the finding in Finding No. (3) that natural gas sold to Colorado and to Clayton Gas Company are sales for resale in interstate commerce, the Commission erred in so far as said finding covers gas sold by Canadian to Colorado and which gas is sold by Colorado to industrial purchasers, upon the ground that gas covered by Colorado's such direct sales are not sales by Canadian for resale in interstate commerce within the meaning of the Natural Gas Act.

D. The Commission erred in making each and every of its other findings in its Finding No. (3).

E. The Commission erred in making Findings Nos. (4) to (14), inclusive. Said findings are not supported by substantial evidence.

F. As to the six formal orders contained in the Commission's "Order Reducing Rates," Canadian states and shows that the Commission erred in making each and every of said orders lettered (A) to (F), inclusive.

G. The findings and conclusion of the Commission in its Supplemental Opinion No. 73-A, dated May 13, 1942, rendered in connection with the Commission's order denying Canadian's Petition for Rehearing and to Reopen are unsupported by and are contrary to the substantial evidence in the case and are based upon facts alleged to exist which are entirely dehors the record.

H. The Commission erred in denying Canadian's Petition for Rehearing and to Reopen filed with it.

As pointed out in the section of this Petition captioned, "The Nature of the Proceedings as to Which Review is Sought," the record in this case, in addition to the pleadings before the Commission, contains 103 volumes of transcript of testimony covering in excess of 15,000 pages, and, in addition thereto, 323 exhibits, some of which are several hundred pages in length.

Colorado Interstate Gas Company, in Cause No. 2550 on the docket of this court, is filing its petition to this court for review of the order of the Commission in these same cases in so far as said order affects said Colorado Interstate Gas Company.

It may be possible, as provided in Subsection 5 (e) of Rule 34 of the Rules of this court to stipulate with counsel for the Commission and counsel for Colorado Interstate Gas Company as to what portions of the transcript shall be printed. If such a stipulation, however, cannot be agreed upon, Canadian respectfully shows that due to the length of the record and the various matters to be submitted to this court for its decision it will not be reasonably feasible for Canadian, within ten days after the filing

with this court of the transcript, to prepare and serve upon all other parties and file with the court a designation of the portions of the transcript to be contained in the printed record, and not less than thirty days from and after the filing of the transcript should be allowed for such designation and service and filing thereof.

Wherefore, Canadian River Gas Company, Petitioner, prays:

1. That a copy of this Petition forthwith be served upon some member of Respondent, Federal Power Commission, in pursuance of Section 19 (b) of the Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 833; Section 717 (b), Title 15 USCA), and that all parties respondent herein be served with a copy of said Petition, as provided by Rule 34 of the Rules of this court.

2. That Respondent, Federal Power Commission, be required, in conformity with said Act, to certify and file with the court a transcript of the record upon which the Order now sought to be reviewed was entered, including the testimony, evidence, exhibits, pleadings, opinions, findings, conclusions and orders of said Respondent in the three dockets above referred to.

3. That pursuant to Rule 34 of this court Petitioner be notified by the Clerk when said transcript has been received and that an order be entered herein allowing Petitioner thirty days from the time of such notice, or such other time as to the court may seem proper, within which to designate the portion of the transcript to be contained in the printed record unless, in the meantime, the parties hereto have stipulated as to what portions of the transcript shall be printed.

4. That this court review the Order of the Respondent, Federal Power Commission, of March 18, 1942, and the findings and opinion of the Commission incorporated therein, as supplemented by the Order of said Commission, dated April 22, 1942, and the Order of the Commission denying Petitioner's Petition for Rehearing and to Reopen filed with the Commission, and upon such review reverse, vacate, set aside and hold said Order for naught.

5. That pending such review and until final determination of such proceedings, the stay of the Commission's Order heretofore granted by this court on May 16, 1942, staying said Order of the Commission pending judicial review be continued in full force and effect.

6. That this court exercise its jurisdiction over the parties and subject matter of this Petition and grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require.

CANADIAN RIVER GAS COMPANY,
By P. C. SPENCER,
Its Vice President
Room 2759, 630 Fifth Avenue
New York, N. Y.

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SMITH, BROCK, AKOLT & CAMPBELL,
JOHN P. AKOLT,
931 Fourteenth Street, Denver, Colorado
Attorneys for Canadian River
Gas Company

[Verification omitted.]

Filed July 10, 1942. Robert B. Cartwright, Clerk.

Petition of Colorado Interstate Gas Company for Stay,
Pending Review, of Rate Order of the Federal Power
Commission, Case No. 2550.

Colorado Interstate Gas Company, a corporation, hereinafter called Petitioner, respectfully represents and shows unto the Court:

I.

Petitioner is a private corporation organized and existing under the laws of the State of Delaware. It owns and operates a main transmission natural gas pipeline, extend-

ing from Clayton Junction, New Mexico, to a point near the City of Denver, in the State of Colorado, and maintains its principal office and place of business at Colorado Springs, Colorado.

II.

Respondent, Federal Power Commission, hereinafter called Commission, is a statutory administrative body, created under the Act of Congress known as the Natural Gas Act (15 U.S.C.A. 717 et seq.) having its principal office and place of business in the City of Washington, District of Columbia. The Commissioners composing said Commission are: Leland Olds, chairman; Claude L. Draper; Basil Manley; John W. Scott and Clyde L. Seavey. Richard J. Connor is the General Counsel, and Edward H. Lange and Caso March are counsel of record for the Respondent, Federal Power Commission.

III.

On December 22, 1938, the Respondent, City and County of Denver, Colorado, a municipal corporation, filed a complaint with the Commission against this Petitioner, and against the Respondents, Canadian River Gas Company, a corporation, and Public Service Company of Colorado, a corporation, asking the Commission to investigate and determine the reasonable cost and charge for gas used in the City and County of Denver, and alleging that the contract price for gas sold by your Petitioner to the Public Service Company of Colorado, at the Denver gate, was unjust, unreasonable and discriminatory, and praying that said contract price be abrogated, and that the Commission fix in lieu thereof, reasonable rates. This cause appears on the Commission's docket as No. G-118. On or about January 30, 1939, this Petitioner and the said Canadian River Gas Company filed their separate answers, and at about the same time Public Service Company of Colorado likewise filed its answer to said complaint.

On or about January 9, 1939, Respondent, Public Service Commission of Wyoming, a public administrative body created by the statutes of the State of Wyoming, filed its complaint with the Commission, which was docketed as

cause No. G-121, wherein it complained against the rates and charges made in Cheyenne, Wyoming by the Respondent, Colorado-Wyoming Gas Company, a corporation. Your Petitioner sells gas to Colorado-Wyoming Gas Company, which is finally resold in Cheyenne, Wyoming, and your Petitioner filed its answer on or about February 17, 1939 in said docket.

On or about the 14th day of March, 1939, the Federal Power Commission instituted, upon its own motion, an investigation of and concerning all rates, charges, classifications, rules, regulations, practices and contracts of your Petitioner and of Canadian River Gas Company and of Colorado-Wyoming Gas Company, which cause is entered upon its docket No. G-124. Your Petitioner filed its answer in said docket on or about October 10, 1940.

The order of March 14, 1939 was made after your Petitioner had answered certain questionnaires sent out by the Commission as to its status and the nature of its business, and said order, in addition to ordering the hearing, contained certain purported findings of fact and conclusions of law with respect to your Petitioner's status, business and contracts, which it believed to be erroneous, and, fearing that said findings would become res adjudicata unless they were challenged within the time and in the manner provided by the Natural Gas Act, your Petitioner and the Canadian River Gas Company filed with the Commission, on or about April 12, 1939, a petition for a rehearing and stay of said order. This petition was denied by the Commission on or about the 9th day of May, 1939.

Thereupon your Petitioner and Canadian River Gas Company filed in this Court in Cause No. 1931 of this Court's docket, their petition for review of said order, pursuant to Section 19 of the Natural Gas Act (15 U.S.C.A., Sec. 717r). The Commission filed its motion to dismiss said petition for review, which this Court did sustain on or about the 4th day of March, 1940. This Court did thereafter, and on July 24, 1940, deny the petition for rehearing. The opinions of this Court in said proceedings are reported in Vol. 110 Fed. (2d) at page 350, et seq., and Vol. 113 Fed. (2d) at page 1010, et seq. Said opinions contain a summary of the facts in these cases up to that time, and hold

that said order of March 14, 1939 was merely preliminary and procedural, and that the purported findings included therein with respect to your Petitioner's status, business and contracts did not become res adjudicata or conclusive pending the hearing on the merits.

Thereafter, and on or about the 13th day of September, 1940, the Commission did enter its order consolidating said causes before it, docketed, G-118, G-121 and G-124, respectively, and set the hearing therein for October 28, 1940, in Denver, Colorado.

Thereafter a hearing in said consolidated causes was held by and before Norman B. Gray, an examiner of said Commission. Said hearings continued from the 28th day of October, 1940, to the 21st day of April, 1941, and occupied one hundred and two hearing days. Oral testimony, exhibits and other documentary evidence was introduced. The transcript of the testimony comprises one hundred three volumes, and is in excess of fifteen thousand pages. Three hundred twenty-three exhibits were introduced.

Thereafter the parties filed their briefs with the Commission, the last of all of said briefs being filed in the month of August, 1941.

On or about the 11th day of March, 1942, your Petitioner filed with the Commission its "Petition of Colorado Interstate Gas Company to Reopen the Above Entitled Proceedings to Take Further Evidence." This petition pointed out that the acceleration of the national defense program and the declaration of war in December, 1941, all intervening between the time of the closing of the hearing in April, 1941, and the date of the petition, March 11, 1942, had caused drastic increases in the operating expense, substantial increases in the cost of necessary additions to its plant and property, and offered to introduce evidence as to such increases. This petition is by reference made a part hereof, and marked Exhibit "A".

IV.

On or about March 25, 1942, the Commission served upon your petitioner its final rate order of said consolidated dockets, which bore the date March 18, 1942. This order is

by reference made a part hereof and is marked Exhibit "B".

V.

Petitioner seeks a stay, pending judicial review by this Court under Section 19 of the Natural Gas Act (15 U.S.C.A. 717r), of said final rate order entered and issued by the Commission and dated March 18, 1942. The jurisdiction and authority of this Court is invoked under Section 262 of the Judicial Code (28 U.S.C.A. 377) which provides that, " . . . The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." (R.S. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162.)

VI.

In its order dated March 18, 1942, the Commission purported to find that the prices being charged by Petitioner to the six distributing companies and one pipeline company, hereinafter described, under long-term contracts terminating in 1948, and which had been negotiated and substantially performed some ten years prior to the enactment of the Natural Gas Act in 1938, were unjust and unreasonable within the meaning of the Act. The Commission overruled all of Petitioner's pleas to its jurisdiction and all of its defenses in law. In the hearings preceding the Order, the Commission admitted extensive evidence as to the competitive conditions under which this fuel, natural gas, was sold, and in particular evidence as to the reasonableness of the prices being charged for said gas as compared to the prices in the same area of the competitive coal and oil and other fuels; but the Commission discarded all of such evidence and refused to make findings with respect thereto. The Commission based its findings as to the unreasonableness of said contract prices solely on its purported findings as to the earnings of your Petitioner for the pre-war year 1939. It discarded the evidence and made no findings with respect to the earnings of your Petitioner for the years prior to 1939 or for the years subsequent thereto. It purported to find that for such pre-war year 1939 the earnings of your Petitioner were ex-

cessive in the amount of \$2,065,000. To arrive at its finding of excessive earnings in this amount for the year 1939 the Commission did, among other things, discard from the rate base for that year used and useful property of the original cost of \$2,791,340. (Commission's Opinion, p. 19, and Finding No. 4) It made drastic reductions in the annual depreciation and amortization expense, contrary to law, which errors are included among the 87 Specifications of Error incorporated in the Petition for Rehearing before the Commission, hereinafter referred to, and which errors will be urged in its Petition for Review before this Court. Having found that your Petitioner's earnings, for said pre-war year 1939 were excessive in the amount of \$2,065,000, the Commission thereupon ordered that your Petitioner file with it on or before April 25, 1942, schedules of rates in lieu of said contract prices, which would for the future reflect an annual reduction in the revenues of this Company of not less than said sum of \$2,065,000 so found to be excessive for the year 1939. Your Petitioner shows that on the basis of its earnings for said pre-war year said sum amounts to a reduction in revenues of 46.1 2%.

VII.

The hearings before the Commission preceding said Order terminated on April 21, 1941, as aforesaid. This Company presented to the Commission full evidence as to its operations, including the original cost of its property, its revenues and expenses for all the years of its existence from 1928 through 1940, and part of the year 1941. Because additions to its plant and property were still in progress, and its books for 1940 not finally closed, some of the items of evidence with respect to plant, revenues and expenses for 1940 submitted by the Company were necessarily estimates. Evidence as to such items for 1941 were, also, based upon estimates. The Company, also, submitted estimates as to the cost of necessary additions to its plant and property through 1947, and it likewise introduced evidence as to its revenues and expenses, including taxes, for such years based upon a normal trend developed from past normal operating expenses and revenues. Between the closing of the hearings on April 21, 1941, and its Order of March 18, 1942, there intervened first an acceleration of

the defense program, and then the declaration of war in December, 1941. These intervening circumstances caused a drastic increase in the operating expenses and taxes of this Company, as well as a substantial increase in the cost of necessary additions to its plant and property; all above said estimates. On March 14, 1942, as aforesaid, this Company filed with the Commission its "Petition of Colorado Interstate Gas Company to Reopen the Above Entitled Proceedings to Take Further Evidence." Thereby it offered to submit evidence that on account of new tax laws its Federal taxes for the year 1941 were \$1,600,000, as against \$684,608 paid for 1940, or an increase of \$915,392, or an increase of 134%, and that as applicable to the earnings from the sale of gas from the so-called Denver line, the record showed \$496,341 for such taxes payable for 1940, and \$683,784 for 1941, whereas, \$493,290 was actually paid for 1940, and \$1,233,779 was payable for 1941. Such tendered evidence showed an increase of 150% in tax expense for 1941 over 1940. The Company, also offered to submit evidence to show that additions to its necessary plant and property for 1940, 1941 and as estimated for 1942, cost \$264,398.30 in excess of the estimate shown in the record. Likewise it offered to show that its other operating expenses had been greatly increased by such war conditions. This petition was denied by the Commission in its Order of March 18, 1942. A copy of this petition is by reference made a part hereof, and marked Exhibit "A".

VIII.

Within the period of thirty days after the issuance of the Commission's Order, allowed by Section 19 of the Natural Gas Act, for application for a rehearing and, to-wit, on the 14th day of April, 1942; and within twenty days of the receipt of such Order, your Petitioner filed with the Commission its verified application or petition entitled, "Petition of Colorado Interstate Gas Company for Rehearing and to Reopen," a copy of which is by reference made a part hereof, and is marked Exhibit "C". Petitioner relies on the errors assigned in said petition or application as basis for this petition.

On April 14, 1942, your Petitioner also filed a verified motion entitled, "Motion of Colorado Interstate Gas Com-

pany for Stay of the Commission's Order of March 18, 1942," copy of which is by reference made a part hereof, and is marked Exhibit "D". Your petitioner relies upon the matters and things set out in said Motion as basis for this petition.

As of the date of filing this petition, the Commission has not acted upon said application for a rehearing and to reopen or said motion for stay.

Your Petitioner has thus exhausted all of its administrative remedies before the Commission.

IX:

The hearings before an examiner of the Commission were closed as aforesaid on April 21, 1941, and the testimony embraces 15,000 pages of transcript, comprising 103 volumes. In addition, there are 323 exhibits. Your Petitioner possesses these 103 volumes of testimony supplied by the official reporter of the Commission, and copies of the 323 exhibits. Your Petitioner has caused these volumes and exhibits to be verified by the affidavit of one of its counsel of record before the Commission, and herewith tenders said verified record in support of this petition.

Your Petitioner will, with all possible diligence, and within the time allowed by Section 19 of the Natural Gas Act, that is, within sixty days after the order of the Commission denying its application for a rehearing, file with this Honorable Court its petition to review said Order of the Commission. Such petition will be filed pursuant to and in conformity with Section 19 of the Natural Gas Act and the rules of this Court. The Commission will then be required, in conformity with subdivision (b) of Section 19 and Rule 34 of this Court, to file a transcript of the record with this Court. Thereupon, your Petitioner will, with all diligence and within the time allowed by the rules of this Court, extract from this voluminous record those matters constituting reviewable errors which the Congress has in said Natural Gas Act assigned and designated for judicial review by the Court.

Pending such judicial review by this Court, and in order to preserve the status quo, and to preserve to your Peti-

tioner the full right of such judicial review accorded by Congress in said Act, your Petitioner seeks a stay of said Order.

Your Petitioner also shows that pending such judicial review, and if such stay is granted, the rights of the several distributing companies, and the rights of the customers of the several distributing companies, that is, the ultimate consumers, can adequately be protected by the bond of your Petitioner to refund to the distributing companies, its customers, all or such part of the ordered reduction as may be ultimately affirmed upon judicial review, or by the impounding, subject to the control of the court, of an amount equivalent to the reduction in revenues ordered by the Commission. In this connection, your Petitioner shows that it is manifest from Section 1 of the Natural Gas Act that it was the objective of Congress, and it must be the objective of the Commission, in those cases where the sale of gas is subject to the jurisdiction of Congress and the Commission, to procure reasonable rates for the public, the ultimate consumers, and that it was not the objective of Congress to lower gate rates or wholesale rates for the benefit of the distributing companies. Your Petitioner shows that even though it is ultimately held that the sales by your Petitioner of gas at the city gates to such distributing companies and such pipeline companies are subject to the jurisdiction of the Commission, and even though the reduction now ordered, or a substantial part thereof, is affirmed, no advantage or benefit to the ultimate consumers can or will result unless and until the rates charged by the distributing companies are in turn reduced. Your Petitioner shows that until a judicial review of this Order is had by this court, no regulatory body having jurisdiction over the rates to the ultimate consumers, assuming that such rates to the ultimate consumer are not contractual and can now be changed, would be warranted in reducing such rates, pending such judicial review. The material facts as to the situation of your Petitioner and its present contract customers, the distributing companies, and of the ultimate consumers, customers of the several distributing companies, are set forth hereinafter.

X.

On February 8th, 1927, the taxpaying electors of the City and County of Denver, pursuant to Article 20 of the Constitution of the State of Colorado, and the Denver Charter (Exhibit 27 before the Commission), voted a twenty year franchise (Exhibit 24 before the Commission) to the Public Service Company of Colorado for the distribution of gas within said city. Section IV-c of said franchise (Exhibit 24, page 29 before the Commission) provided:

"If at any time during the first ten (10) years of this franchise the Mayor and Council of the City, after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, shall by majority vote of the Council with approval of the Mayor determine that it is feasible to bring natural gas to Denver and shall give notice to the Company of their findings, together with engineering information upon which such determination was based, and provided a fair and reasonable rate is established for such service, then within two years thereafter the Company shall make such supply available to the City."

On September 14, 1927, Denver passed its Ordinance No. 178, Series 1927 (Exhibit 25 before the Commission), Section 1 of which provided:

"That after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith, upon the final passage, publication, and approval of this Ordinance by the Mayor, to deliver to said Public Service Company of Colorado a duly certified copy hereof, together with a verified copy of the 'Report on Proposed Natural Gas Rates for Denver,' dated August 10, 1927, which was prepared, after investigation, by A. C. King, Consulting Engineer of Chicago, Illinois, and which said report constitutes the engineering advice and information upon which said findings

and determination are based, and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had for particularity and notice of which is hereby given to said Public Service Company of Colorado in conformity to the provisions of said Section IV-c of said above mentioned Franchise."

Section 2 of said Ordinance (Exhibit 25 before the Commission) granted the right to Public Service Company of Colorado to sell natural gas in place of manufactured gas under a schedule of rates "for the unexpired term of said franchise," that is, until February 8, 1947 (Exhibit 24 before the Commission.) The Ordinance provided that the gas was to have a heating value of not less than 800 Btu. per cubic foot, and the rates to the consumer were then prescribed.

Section 3 provided in part:

"Under said Franchise said Public Service Company of Colorado is required to supply said City and County and its inhabitants with natural gas as long as the same is available, during the unexpired term of said Franchise, and a reserve acreage of gas leaseholds in the State of Texas, from which natural gas may be supplied sufficient for the uses of said City and County of Denver and its inhabitants during the unexpired term of said Franchise, by contract, has been rendered available to said Public Service Company of Colorado."

This action by Denver, plus the action of the City of Pueblo hereinafter alleged, plus the procurement by your Petitioner of a contract with the Colorado Fuel and Iron Company for the direct sale of gas on an interruptible or cut-off basis for industrial purposes (which sale is not covered by the Natural Gas Act nor subject to the jurisdiction of the Commission), induced your Petitioner to acquire the contract with the Canadian River Gas Company for a supply of gas from the Texas Panhandle gas field (Exhibits 1 and 16 before the Commission), and acquire a contract with Public Service Company of Colorado for the sale of gas to it at the city gate (Exhibit 7-1 before the Commission), and to venture its capital and construct and operate its pipeline system.

On or about February 20, 1928, pursuant to its Charter and the Constitution of the State of Colorado, the City of Pueblo adopted Franchise Ordinance No. 1245 (Exhibit 39 before the Commission) entitled:

"An Ordinance Granting Franchise Rights to The Pueblo Gas and Fuel Company, Subject to the Vote of the Qualified Taxpaying Electors, Establishing Rates to Be Charged for Natural and Artificial Gas, and Calling a Special Election to Determine Whether or Not Such Franchise Shall Be Granted."

The Ordinance then recited:

"Whereas, The Pueblo Gas and Fuel Company has perfected arrangements for supplying natural gas to the people of the City of Pueblo, provided a schedule of rates which will justify its expenditures on this account is established for a term of twenty (20) years; and—

"Whereas, The Pueblo Gas and Fuel Company must make extensive changes in its distribution system to provide for natural gas and must agree to pay a fixed and unchanging price for such natural gas throughout said period of twenty (20) years."

Section 1 of this Ordinance provided:

"That subject to the approval of the qualified taxpaying electors of the City of Pueblo to be evidenced by their votes at the special election hereinafter provided for, the franchise is hereby granted by the City of Pueblo to The Pueblo Gas and Fuel Company, its successors and assigns, to construct, maintain and operate within the City of Pueblo, a plant for the manufacture and generation of gas with the right and privilege to distribute either natural or artificial gas to the City of Pueblo, its inhabitants and people in the vicinity by means of pipes, mains, . . . " etc.

Rates for manufactured gas then being furnished were continued in effect, but it was then provided in Section 6:

"In consideration of the agreement by The Pueblo Gas and Fuel Company—to be evidenced by its acceptance of this ordinance—to be prepared to furnish natural gas to the inhabitants of the City of Pueblo within two (2) years, to make, at its own expense, the alterations in its system and

in its customer's domestic gas appliances necessary for the distribution thereof, and to contract with the Colorado Interstate Gas Company for a large reserve acreage of gas leaseholds in the State of Texas to be made available for future use by the people of the City of Pueblo and other towns, cities and places to be served by the proposed pipe line without discrimination against the City of Pueblo or its inhabitants; subject, however, to requirements for gas by Amarillo and a number of small towns in the Panhandle of Texas, and for helium gas by the United States Government from the Cliffside Structure, the following schedule of rates to be charged domestic consumers of natural gas is hereby established and declared to be fair and reasonable when applied and averaged throughout a period of twenty (20) years."

Then followed the schedule of rates to be charged, and in Section 7 it was provided that the "foregoing schedule shall remain in effect for a term of twenty (20) years from the date on which said company turns natural gas into its distribution system."

On April 6, 1928, the taxpaying electors voted approval of the franchise, including such rate provisions, and gas deliveries began in the Summer of 1928 (Exhibit 40 before the Commission).

In contemplation of, and pursuant to such action by the City of Pueblo, your Petitioner entered into a contract with the Pueblo Gas and Fuel Company for the sale of gas at the Pueblo gate for a term of twenty years (Exhibit 7-H before the Commission).

Your Petitioner also sells gas, under a contract (Exhibits 7-A, B, C and D before the Commission) to Citizens Utilities Company, which is the distributing company operating under franchise in La Junta, Rocky Ford, Las Animas, Swink, Ordway, Manzanola, Sugar City and Fowler; all small Colorado towns in the valley of the Arkansas River. Citizens Utilities Company is the successor to Public Utilities Consolidated Corporation, which went through bankruptcy. Some of these contracts were originally negotiated with Arkansas Valley Natural Gas Company, but were later assigned to the Citizens Company, or its bankrupt predecessor, the said Public Utilities Consolidated Corporation, and

your Petitioner now, sells to Arkansas Valley Natural Gas Company under contract (Exhibit 7-C before the Commission) only an insignificant amount of gas necessary to permit that company to fulfill one contract with the Fountain Valley School, near Colorado Springs.

Sometime prior to June 15, 1931, the City of Colorado Springs, a municipal corporation, a charter city operating under Article 20 of the Colorado Constitution, which city is the proprietor of a municipal gas distribution system, entered into a contract with one *Arthur K. Lee* for a supply of natural gas at the city gate. The said Lee was unable to perform his contract, whereupon it was agreed between your Petitioner, the said Lee and the said City that the original contract would be amended so as to raise the gate rate or price for natural gas to 40c per thousand cubic feet, and that thereupon your Petitioner would take an assignment of said contract from the said Lee and perform the same. The said Lee and the City, by appropriate action, did amend said contract on June 12, 1931. This amended contract (Exhibit 7-E before the Commission) provided in Article 4th that the said Lee should

"On or before the first day of August, 1931, execute and deliver to Ford, Bacon & Davis, Inc., or to the Colorado Interstate Gas Company, an assignment of this contract, which assignment will obligate such assignee to perform the provisions of this contract."

The contract then set forth a schedule of rates to be charged by the City to the consumers, and Article 7th provided that "this contract shall continue until the 19th day of June, 1948."

On October 3, 1929, your Petitioner executed with the Colorado-Wyoming Gas Company a contract (Exhibit 7-F before the Commission) for the sale of gas for twenty years, subject, however, to prior termination at the option of your Petitioner on the 3rd day of January, 1948. Colorado-Wyoming Gas Company either itself sells such gas directly to industrial customers, or sells it to other distributing companies for resale, in certain Northern Colorado towns and in Cheyenne, Wyoming.

On or about October 15, 1931, your Petitioner made a

contract with Natural Gas Pipeline Company of America (Exhibit 7-G before the Commission) for the supply of natural gas to that pipeline company at Gray Junction, Oklahoma, for a period ending September 30, 1946, with options to renew the contract subject to the limitations therein stated.

None of the cities, towns or municipalities in which gas sold by your Petitioner is ultimately distributed by customers of your Petitioner, were complainants or parties of any kind in the proceedings before the Commission, except the City and County of Denver, which was a complainant. None of the distributing companies, nor the pipeline companies which purchase gas from your Petitioner were complainants or parties to the proceedings before the Commission, except the Public Service Company of Colorado, Colorado-Wyoming Gas Company and Cheyenne Light, Fuel and Power Company, a purchaser from the Colorado-Wyoming Gas Company; all of which companies were defendants or respondents.

Your Petitioner shows that if it is compelled, pending a judicial review of the Commission's Order to put into effect the reduced rates, then the money representing the reductions will be claimed as their property by the said pipeline and distributing companies, and that it will not automatically or immediately enure to the benefit of the ultimate consumers. Your Petitioner shows that even though the rates to the consumer may in all instances, or in some instances, be held not to be contractual as between the several distributing companies and the respective municipalities, and even though said rates to the consumer may ultimately be reduced through the regulatory process, or by voluntary agreement, yet such reductions are not now certain; and in any event the ultimate consumers will not be prejudiced by the stay of the Power Commission's Order, pending a judicial review by this court of said Order.

Your Petitioner further shows that if it is compelled, pending judicial review, to put into effect the reduced rates, and such reductions are in turn handed over, so to speak, by the distributing companies to the ultimate consumers, and said Order is then modified or reversed in whole or in part, then it will require a multiplicity of suits to recover the

said sums from the ultimate consumers, and in turn from the distributing companies, and that said recoveries are not at all certain.

In this connection, your Petitioner shows that of all of the distributing companies and pipeline companies, customers of your Petitioner, only two were parties to the proceedings before the Commission, but your Petitioner is now before this court, and that your Petitioner will, until the final disposition of this matter, be subject to the jurisdiction and orders of this court.

XI.

Your Petitioner shows, that if the Order of the Commissioner of March 18, 1942, be not stayed and its operation be not suspended, pending the judicial review thereof by this court, then your Petitioner will sustain irreparable damage and loss, and its property will be confiscated, contrary to the Fifth Amendment of the Constitution of the United States. The reduction of \$2,065,000 per annum will be at the average rate of \$172,083.33 per month. Should said Order be abrogated in whole or in part, as Petitioner earnestly urges and believes it will be, then the revenues of which your Petitioner will have been deprived up to the time of the abrogation of such Order will be lost to Petitioner. Your Petitioner shows that if it files the new schedules as now ordered, the money representing the reduction will irrevocably become the property of the several distributing companies. Your Petitioner shows that no provision is contained in the Natural Gas Act authorizing the Commission or this court to make provision for the recoupment by or reimbursement to the Petitioner of all or any part of said sum of money, and no provision is contained in said Act, or in any other law, whereby Petitioner could recover or recoup such losses as the result of further rate proceedings or otherwise. Your Petitioner shows that it is without protection against the irrevocable loss of the amount represented by the reduced revenues during the period pending the judicial review of said order by this court, except by declining to observe the Order during such period. Your Petitioner shows that if it declines to observe the Order then its officers and employees might be prosecuted under the severe penal provisions of Section 21

of the Natural Gas Act, which provides that any person who wilfully and knowingly does or causes, or suffers to be done, any act, matter or thing in the Natural Gas Act prohibited or declared unlawful shall, upon conviction thereof, be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or both. Said Section 21 further provides that any person who wilfully or knowingly violates any rule or order imposed by the Federal Power Commission under authority of the Act shall, in addition to other penalties, be punished upon conviction by a fine not exceeding \$500 for each day during which such offense occurs. Without admitting that such officers and employees would be subject to such severe penalties under the circumstances confronting them, your Petitioner respectfully urges that they should not be put to the alternative of accepting the reduction of such revenue in such substantial amount without any assurance that it would ever be recovered in the event the Order is invalidated in whole or in part upon judicial review, or of defying said Order and thus taking the risk of becoming subject to such prosecution under such severe penalty provisions.

XII.

Your Petitioner shows that to compel it to submit to said Order and file the schedules of reduced rates, and to give up said sums pending judicial review, or to disobey said Order and run the risk of such penalties pending such judicial review, in practical effect nullifies such judicial review and operates to confiscate its property, and violates Due Process; all in violation of the Fifth Amendment of the Constitution of the United States.

XIII.

Your Petitioner shows that there exists no such emergency and no such public interest as would require that it be subjected, pending judicial review of such Order, to the peril of losing its revenues, or, in the alternative, to the peril of risking the severe penalties under Section 21 of the Natural Gas Act; and your Petitioner further shows that a failure to stay the Order will inflict irreparable damage on it, whereas, the rights of the respondent customers, the distributing companies, and the rights of the

ultimate consumers can be protected by the bond of your Petitioner to pay over to its customers, the, distributing companies, all or such part of the reduction as is finally affirmed on judicial review, and may be protected by such other conditions as this court shall find just and equitable. Your Petitioner further shows that this petition is not made for delay, but that it is presented and urged only to the end that justice be done.

Wherefore, Petitioner prays that an immediate order be entered staying the operation and effect of the Federal Power Commission's Order dated March 18, 1942, pending the judicial review of said Order by this court in the manner provided by the Natural Gas Act. In the event that this court shall find it necessary to take this Petition for Stay under advice, Petitioner prays that an order be entered immediately, temporarily staying said Order of the Commission pending further consideration of and action by this court under this Petition. Petitioner prays for such other and further relief to which it may show it is entitled in the premises.

WILLIAM A. DOUGHERTY,

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[Exhibits and Verification omitted.]

Filed April 20, 1942.

Petition of Canadian River Gas Company for Stay, Pending Review, of Rate Order of Federal Power Commission, Case No. 2551.

Canadian River Gas Company, a corporation, hereinafter sometimes called Petitioner and sometimes called Canadian, respectfully represents and shows unto the court:

I.

Petitioner is a private corporation organized and existing under the laws of the State of Delaware. It owns certain gas leasehold interests in lands located in what is known as the Amarillo, Texas, or Texas Panhandle Gas Field located in the State of Texas, from which it produces and gathers natural gas. Substantially all of such natural gas so produced and gathered by Petitioner is by it sold to the Colorado Interstate Gas Company at a point near Clayton, New Mexico, or at Gray, Oklahoma. A small portion of such gas is sold and delivered to Clayton Gas Company at Clayton, New Mexico, and to Amarillo Oil Company in Texas. It owns and operates a transmission line extending from the end of its gathering lines in the gas field in Texas a distance of approximately 86 miles to a point in New Mexico known as Clayton Junction. Through its transmission line it transports the natural gas so produced and gathered by it and which is sold and delivered to Colorado Interstate Gas Company at Clayton Junction, New Mexico, and the gas sold and delivered at Gray, Oklahoma, is transported through leased facilities owned and operated by Texoma Natural Gas Company. The said Colorado Interstate Gas Company owns and operates a transmission line extending in a northerly direction from Clayton Junction into Colorado to the southerly end of the city limits of the City of Denver, through which transmission line the Colorado Interstate Gas Company transports the gas purchased by it from Canadian at Clayton Junction and distributes it to the customers of Colorado Interstate Gas Company at various points in Colorado. Substantially all of the gas sold by Canadian is sold, as aforesaid, within the territory of this Circuit. The General Manager and other representatives of Canadian have their offices in Colorado Springs, Colorado.

Respondent, Federal Power Commission, hereinafter called Commission, is a statutory administrative body created under the Act of Congress known as the Natural Gas Act (15 USCA 717, et seq.), having its principal office and place of business in the City of Washington, District of Columbia. The Commissioners composing the said Com-

inission are: Leland Olds, Chairman; Claude L. Draper, Basil Manley, John W. Scott; and Clyde L. Seavey, each of whom has an official residence and office in the City of Washington, District of Columbia. Richard J. Connor, as General Counsel, and Edward H. Lange and Caso March, all of whose offices are also in Washington, D. C., are counsel of record for the Respondent, Federal Power Commission, in the proceedings before that Commission hereinafter referred to.

III.

Petitioner seeks a stay, pending judicial review by this Court under Section 19 of the Natural Gas Act (15 USCA 717 r), of a final rate order entered and issued by the Commission. The jurisdiction and authority of this Court is invoked under Section 262 of the Judicial Code (28 USCA 377), which provides that "The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." (R.S. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162).

IV.

On December 22, 1938 the Respondent, City and County of Denver, Colorado, filed a complaint with the Commission against Canadian and the Respondent, Colorado Interstate Gas Company, and Respondent, Public Service Company of Colorado, asking the Commission to investigate and determine the reasonable cost and charge for gas used in the City and County of Denver and other related matters, alleging that the contract price for gas to the Public Service Company of Colorado at the Denver gate was unjust, unreasonable and discriminatory, and praying that the contract price be abrogated and that the Commission fix reasonable rates. This is Cause appearing on the Commission's docket as No. G-118. Canadian, on or about the 30th day of January, 1939, filed its answer to said complaint of the City and County of Denver, Colorado, and the said Colorado Interstate Gas Company and the said Public Service Company of Colorado likewise filed their answers thereto.

On or about January 9, 1939, Respondent, Public Service Commission of Wyoming, filed its complaint with the Commission in Cause No. G-121 on the docket of the Commission, complaining of the rates and charges for natural gas in Cheyenne, Wyoming, made by the Respondent, Colorado-Wyoming Gas Company and related matters to which Canadian filed its answer on or about February 25, 1939.

On or about the 14th day of March, 1939, the Commission, in Cause No. G-124 on the docket of the Commission, ordered upon its own motion an investigation by the Commission of and concerning all rates, charges, classifications, rules, regulations, practices or contracts of Canadian and of Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, to which Canadian filed its answer on or about October 10, 1940.

On or about April 12, 1939, Canadian and Colorado Interstate Gas Company filed with the Commission their petition for rehearing and stay of the said Order of investigation of March 14, 1939, which petition the Commission did deny on or about the 9th day of May, 1939.

Thereupon, Canadian and Colorado Interstate Gas Company did file in this Court in Cause No. 1931 on the docket of this Court their petition for review pursuant to Section 19 of the Natural Gas Act, 15 USCA, Sec. 717 r, and the Commission did file its motion to dismiss said petition for review which this Court did sustain on or about the 4th day of March, 1940. This Court did deny the petition for rehearing of Canadian and Colorado Interstate Gas Company on or about July 24, 1940. The opinions of this Court in said proceedings are reported in Volume 110 Fed. (2d) 350 and Volume 113 Fed. (2d) 1010. Said opinions contain a summary of the facts in these cases up to said time.

Thereafter, and on or about the 13th day of September, 1940, the Commission did enter its order providing that said Causes numbered G-118, G-121, and G-124 be consolidated for hearing and setting the 28th day of October, 1940, in Denver, Colorado, as the time and place for the start of said hearing.

Thereafter a hearing in said consolidated causes was

held by and before Norman B. Gray, an examiner duly appointed and designated for said purpose by the Commission, said hearing consuming 102 hearing days and continuing from the 28th day of October, 1940 to the 21st day of April, 1941. Extensive evidence, consisting of oral testimony, exhibits and other documentary evidence, was introduced. The transcript of the testimony comprises 103 volumes and is in excess of 15,000 pages. In addition to this testimony, 303 exhibits were introduced.

Thereafter the various parties to said proceeding filed their briefs with the Commission, aggregating in excess of 2200 pages. Canadian's reply and last brief was filed on or about the 19th day of August, 1941. The last of all of said briefs filed with the Commission by any of the parties to said proceeding was filed in the month of September, 1941.

Thereafter, and on or about the 11th day of March, 1942, Canadian did file with the Commission its "Petition of Canadian River Gas Company to Reopen the Above-Entitled Proceedings to Take Further Evidence," dated March 10, 1942, in which Canadian did, among other things, point out that the evidence introduced before the Examiner of the Commission was to the greatest extent based upon actual facts only up to and including the year 1939 and estimated facts for the years 1940 and 1941 and years subsequent thereto and that due to accelerated government defense and war and other conditions, taxes and other expenses of Canadian had greatly increased since the evidence was introduced. Said Petition to Reopen pointed out that the record before the Commission was based upon peacetime operations, and that accelerated government defense, war and other conditions occurring since the year 1939 had seriously affected Canadian's operations and would continue to do so in the future, evidence as to which Canadian offered to introduce in its Petition to Reopen.

V.

Thereafter, the Commission did enter and issue its "Order Reducing Rates" dated the 18th day of March, 1942, and served upon Canadian on or about the 25th day of March, 1942, which order contains a number of findings of fact made by the Commission upon which said Order is

based and incorporates therein as a part thereof the Commission's Opinion No. 73, dated the 18th day of March, 1942. Said Commission's Order of March 18, 1942 did deny Canadian's petition of March 10, 1942 to reopen said proceedings for the purpose of taking further evidence, and did order Canadian to file with the Commission, on or before April 25, 1942, new schedules of rates and charges for and in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect an aggregate annual reduction in Canadian's rates and charges of not less than \$561,000 per year, being \$551,000 per year on gas sold to Colorado Interstate Gas Company, and \$10,000 per year for gas sold to Clayton Gas Company, this aggregate reduction being at the average rate of \$46,750 per month.

Thereafter and on April 14, 1942, Canadian filed with the Commission its Petition for Rehearing and to Reopen directed to the said Commission's Order, dated March 18, 1942, and the findings and the Commission's Opinion incorporated therein. At the same time that Canadian filed said Petition for Rehearing it did also file with the Commission its motion for stay of the Commission's Order of March 18, 1942, pending a ruling upon Canadian's Petition for Rehearing and to Reopen, and, if said motion should be denied by the Commission, then pending the filing in this Court of a petition for review pursuant to the provisions of Subdivision (b) of Section 19 of the Natural Gas Act and the decision of this Court on such petition for review.

As of the time of the filing of this petition the Commission has neither denied nor granted nor taken any other action in connection with Canadian's Petition for Rehearing and to Reopen or Canadian's motion for stay of the Commission's Order of March 18, 1942.

There is submitted herewith and by this reference incorporated herein and made a part hereof a copy of Canadian's Petition to Reopen and to take further evidence, dated March 10, 1942, marked Exhibit A, and a copy of the Commission's said Order, dated the 18th day of March, 1942, and its accompanying Opinion No. 73, marked Exhibit B, and a copy of Canadian's Petition for Rehearing

and to Reopen directed to the Commission's said Order of March 18, 1942, marked Exhibit C, and a copy of Canadian's motion for stay of the Commission's Order of March 18, 1942, heretofore filed with the Commission and denied, as aforesaid, marked Exhibit D:

Canadian has thus exhausted all its administrative remedies before the Commission.

Canadian relies upon the errors specified in its Petition for Rehearing and to Reopen filed with the Commission and upon the matters and things set out in its motion for stay filed with the Commission as basis for this petition.

VI.

Canadian will, with all possible diligence and within the time allowed by Section 19 of the Natural Gas Act, that is, within sixty (60) days after the Order of the Commission denying its Petition for Rehearing and to Reopen, file with this Honorable Court its petition to review said Order of the Commission. Such petition will be filed pursuant to and in conformity with Section 19 of the Natural Gas Act and the rules of this court. In its said petition for review to be so filed in this court Canadian will pray that the said Order of the Commission be vacated and set aside, and, as consideration for said petition, will rely upon its specification of errors set forth in its Petition for Rehearing and to Reopen filed with the Commission, as aforesaid.

Pending such judicial review by this court and in order to preserve to Canadian the full right of such judicial review accorded by Congress in said Natural Gas Act, Canadian seeks a stay of said Order of the Commission, dated the 18th day of March, 1942, by order of this court to be entered herein.

VII.

One hundred thirty-two grounds of error directed to the Commission's Order, dated March 18, 1942, and the findings of fact and the Commission's opinion incorporated therein are set forth in Canadian's Petition for Rehearing and to Reopen filed with the Commission and will be included within the specification of points to be set forth in Canadian's petition for review to be filed with this

court pursuant to Section 19 of the Natural Gas Act. Said Petition for Rehearing and to Reopen so filed with the Commission was filed in good faith and upon grounds which Canadian believes to be well founded, and Canadian's petition for review to be filed in this court will be filed in good faith and will set forth grounds of error in the Commission's order, findings and opinion which Canadian believes to be well founded. Canadian will not attempt in this application for stay to outline all of the errors in the Commission's order, findings and opinion raised in its Petition for Rehearing and to Reopen filed with the Commission or which will be raised in the petition for review to be filed in this court, but, as indicative of the seriousness and merit of Canadian's contentions, here points out that the following serious and important questions, among others, are raised by Canadian's Petition for Rehearing and to Reopen filed with the Commission and will be raised in Canadian's petition for review filed in this court.

Canadian calls the court's attention to Section 1 of the Natural Gas Act which reads as follows:

"Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

"(b). The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Notwithstanding the above provisions of the Natural Gas Act, the Commission has held, erroneously, as Canadian contends, that the Commission has rate-regulatory jurisdiction over Canadian's production and gathering properties, facilities and business, and the Commission in this case has exercised such assumed jurisdiction by including Canadian's production and gathering properties, facilities and business in all its computations for rate base, revenues, expenses and other matters used in determining what the Commission has found to be a proper charge on the rate-regulatory basis for Canadian to make for the gas which it sells.

Canadian's production and gathering business is local in character; has not been declared to be and is not "affected with a public interest," and is not interstate in character; and the Natural Gas Act itself provides that it shall not be applicable to such production and gathering. The Commission's rate-regulatory jurisdiction, at the most, extends only to the transportation of natural gas in interstate commerce and to the sale in interstate commerce of natural gas for resale for ultimate public consumption, and therefore Canadian contends that the Commission erred in each and all of its findings, rulings and orders in so far as they relate to and include Canadian's production and gathering properties, facilities, operations and business, and in so far as it covers gas not sold by Colorado Interstate Gas Company for resale.

As stated above, the hearing in this case before the Commission's Trial Examiner consumed 102 hearing days. The transcript of the testimony is covered by 103 volumes containing something over 15,000 pages. In addition to this, there are 303 exhibits. Practically one-half of all this transcript is directed to Canadian's production and gathering properties, facilities, operations and business.

The Commission has found a rate base for Canadian of \$9,375,000 which is based upon the Commission's conception and findings as to Canadian's original cost. Canadian contends that such finding is not supported by substantial evidence and that the present fair value of its properties is not less than \$13,135,965, exclusive of working capital. Approximately two-thirds of the total value included in Canadian's rate base as found by the Commission relates

to Canadian's production and gathering properties and facilities over which Canadian contends the Commission has no jurisdiction.

Even assuming that the Commission does have jurisdiction over the Canadian's production and gathering properties, facilities and business, Canadian contends that the Commission erred in its findings as to such values. The Commission has deducted \$3,864,357 from Canadian's original cost as established by the evidence which includes the sum of \$3,370,817 of actual cash money which was invested by Canadian in said production and gathering properties. The Commission has absolutely ignored uncontradicted evidence in the record showing the present fair value of Canadian's gas leasehold properties to be in excess of \$15,000,000. The Commission absolutely ignored uncontradicted evidence in the case as to the market value of natural gas in the Texas Panhandle Field and as to market value of natural gas at the end of Canadian's gathering system which is the beginning of Canadian's transmission system.

In determining depreciation and depletion both in connection with the depreciation base and annual depreciation and depletion expense allowance, the Commission has found that the life of Canadian's gas reserves will continue until the year 1977. Canadian contends that such finding is not supported by any substantial evidence in the record and that the life of Canadian's reserves will not extend beyond the year 1956. The Commission has allowed in the rate base property additions for only the years 1940 and 1941, whereas Canadian contends that estimated property additions of the value in excess of \$1,000,000 for the years 1942 to 1947 should properly be included.

The Commission has found Canadian's expenses as of the year 1939, and which it has used as the estimate of Canadian's expenses in the future, to be greatly below the amount Canadian contends as established by the evidence.

Admittedly all of Canadian's gas is not subject to the jurisdiction of the Commission. The Commission has used a so-called "allocation of costs" theory in purporting to determine what portion of Canadian's values, revenues, ex-

penses and net income are applicable to the properties over which the Commission has jurisdiction. Canadian contends that such "allocation of costs" theory is unsound in law and not justified by the facts in this case.

On January 3, 1928, some ten years before the adoption of the Natural Gas Act, Canadian entered into a contract with Colorado Interstate Gas Company. This contract, among other things, obligates Canadian to own, maintain and develop gas lands and leasehold or other interests therein and to develop, drill for, produce and gather gas therefrom. Certain quantities of the gas so produced and gathered Canadian is then obligated to transport and deliver to Colorado Interstate Gas Company under said contract. The so-called purchase price to be paid Canadian under said contract computed on the cost basis in said contract provided is the agreed compensation to Canadian for the performance of all its obligations under said contract.

Canadian's entire income is based upon the cost of gas computed under this January 3, 1928 contract with Colorado Interstate Gas Company, and amendments thereto. This cost is computed by deducting all outside revenues received by Canadian (including sales of gas to others) from the aggregate cost of producing and delivering all gas sold to purchasers. This cost includes interest and amortization of funded and other indebtedness of Canadian, but does not include depreciation and depletion.

The effect of the Commission's order of March 18, 1942 in this case is to change the contract price for gas or the amount of compensation to be paid Canadian by Colorado Interstate Gas Company under this contract. Canadian contends that the Commission has no power or right to so change said contract or the compensation to be paid by Colorado Interstate Gas Company thereunder during the life of said contract.

The Commission has ordered a reduction in the amount which Canadian is entitled to receive under said contract in the aggregate of \$561,000 per year, or at the average rate of \$46,750 per month. Canadian's total operating revenues for the year 1939, as found by the Commission, is

the sum of \$2,393,387, from which it appears that the Commission has made a reduction of approximately 25% in Canadian's operating revenues based upon 1939 figures as found by the Commission.

The Commission has based its order entirely upon values, revenues, expenses and other related matters found by the Commission to exist in the one pre-war year of 1939. Canadian filed a petition to reopen to take further evidence to show Canadian's increased tax and other expenses since the year 1939 resulting from the defense program prior to December, 1941, and from the war program since December, 1941. While the Commission states in its opinion that it has taken cognizance of these increased expenses and of the effect of war conditions upon Canadian's business, it, nevertheless, overruled Canadian's petition to reopen and such cognizance as the Commission may have taken of the effect of war conditions upon Canadian's business is necessarily not based upon any evidence in the record in that the Commission refused to reopen the case to permit such evidence to be introduced.

As above indicated, Canadian will not herein further outline the various errors committed by the Commission in its order, findings and opinion, and the seriousness thereof. Canadian points out, however, that in the respects hereinabove outlined and in the various other respects set forth in its petition for rehearing filed with the Commission and which will be set forth in the petition for review to be filed with this court, the Commission's Order is erroneous and its enforcement will deprive Canadian of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

VIII.

If the Order of the Commission, dated March 18, 1942, be not stayed and its operation be not suspended pending the preparation and filing by Canadian of a petition for review in this court and pending the hearing and determination of said petition for review by this court, Canadian will sustain serious, substantial and irreparable damages and losses in this, among other things, to wit:

A. The operation of the Order will deprive Canadian of the sum of \$561,000 per annum, or at the rate of \$46,750 per month.

B. As the record shows without contradiction, Canadian's entire income is based upon the cost of gas computed under its contract of January 3, 1928, with Colorado Interstate Gas Company, and amendments thereto. Any income received by Canadian through sales of gas to Amarillo Oil Company and Clayton Gas Company or any other customer operates only to reduce the costs and prices paid by Colorado Interstate Gas Company under its said contract with Canadian. The cost of gas sold by Canadian to Colorado Interstate Gas Company is computed by deducting all outside revenues received by Canadian (including sales of gas to others) from the aggregate cost of producing and delivering all gas sold to purchasers. This cost includes interest and amortization of funded and other indebtedness of Canadian, but does not include depreciation and depletion.

C. As the record shows, as of June 1, 1928, Canadian issued its \$11,000,000 of 6% sinking fund gold bonds under a trust indenture with Equitable Trust Company, now succeeded by Chase National Bank of New York as Successor Trustee. Beginning June 1, 1930, and periodically thereafter, bonds were redeemed through the sinking fund in accordance with the trust indenture, and at the present time the total amount of bonds outstanding is \$3,868,000. All of said bonds are still owned by Colorado Interstate Gas Company, but are pledged by Colorado Interstate Gas Company as collateral security for its outstanding bonds, and said outstanding bonds of the Colorado Interstate Gas Company now in the amount of \$6,864,000 are held by a third party or parties other than said Colorado Interstate Gas Company.

Interest at the rate of 6% per annum is payable on Canadian's outstanding bonds on June 1 and December 1 of each year. Said trust indenture securing said bonds obligates Canadian, in addition to the payment of interest, to pay to the Trustee, as a sinking fund, on June 1, 1942, and again on December 1, 1942, the sum of \$303,243, and further obligates Canadian, on June 1, 1943, and semi-

annually thereafter on the 1st day of December and the 1st day of June in each year, to and including the 1st day of December, 1947, to pay into said sinking fund the sum of \$300,270.

From the above it will be seen that on June 1, 1942, the Company is obligated, under said trust indenture, to pay the sum of \$303,243 into the sinking fund, and \$116,040 as interest, or a total of \$419,283; and again on December 1, 1942, the sum of \$303,243 in the sinking fund, and \$107,130 as interest, or a total of \$410,373.

Said trust indenture covers all the producing, gathering and transmission properties of Canadian and, by supplemental indenture thereto, also dated June 1, 1928, covers Canadian's contracts, including its contract of January 3, 1928 with Colorado Interstate Gas Company. Said trust indenture obligates Canadian to perform all the obligations of said contract of January 3, 1928 with Colorado Interstate Gas Company and its other outstanding contracts. Said trust indenture expressly provides that in case Canadian shall default in the payment of interest or sinking fund, or shall default in the performance of its other obligations which it has agreed to perform under said trust indenture, or if Canadian shall become bankrupt, numerous cumulative remedies may be exercised by the Trustee under said trust indenture and the bondholders, including the right of receivership, entry upon and possession of the trust estate, the right to declare all the bonds immediately due and payable, and the right of foreclosure and sale.

Canadian further shows that in addition to its obligation under said trust indenture and under said contract of January 3, 1928 with Colorado Interstate Gas Company to pay said principal and interest, including sinking fund, at the time, in the manner and in the amounts above stated, Canadian is obligated, among other things, both by said contract of January 3, 1928 and said trust indenture, to own, maintain and develop its gas lands, including its leasehold and other interests therein, and to develop, drill for, produce and gather gas therefrom, and to maintain and operate its transmission line and transport natural gas there-through.

Canadian further shows that, in addition to its outstanding bonded indebtedness, as of December 31, 1941, it was indebted to Colorado Interstate Gas Company in the sum of \$1,281,214 on 6% notes issued from time to time at par for cash to Colorado Interstate Gas Company to finance Canadian's obligations under said contract of January 3, 1928, which notes, as provided in said contract, are redeemable in monthly installments.

Canadian states and shows that it has no source of income to make the various payments above mentioned and to enable it to perform its various obligations which are necessary to be performed if its contracts are to be complied with and if natural gas is to be delivered by Canadian to its customers and by said customers to the ultimate consumers, except such income as it receives from Colorado Interstate Gas Company computed as provided in said contract of January 3, 1928. Under the provisions of its trust indenture, Canadian is prohibited from making any sale or sales of gas other than those covered by present contracts without the consent of the Trustee; and, as hereinbefore pointed out, the receipts from additional sales, if any, would serve only to reduce the amounts to be paid to Canadian by Colorado Interstate Gas Company under its aforesaid contract with Canadian. Moreover, under said contract any other cash received by Canadian from outside sources, whether through the sale of property, the borrowing of money, or otherwise, would likewise inure to the credit and benefit of Colorado Interstate Gas Company under said contract, and would not be available to Canadian to meet its cash deficiency caused by the Commission's Order. Such cash deficiency can be supplied only through Colorado Interstate Gas Company if Canadian is to observe and perform its present contract and trust indenture obligations.

It necessarily follows, and is a fact, that if Canadian is required to charge and receive from Colorado Interstate Gas Company and Clayton Gas Company \$561,000 per annum less than provided for in said contract of January 3, 1928, Canadian will be short by just that sum in an amount necessary to perform its obligations under said contract of January 3, 1928, and under said trust inden-

ture. The further necessary effect of this inability to perform said obligations will be to render it impossible for Canadian to continue to maintain, develop and operate its gas leaseholds and its transmission system so as to deliver gas to Colorado Interstate Gas Company and Clayton Gas Company in manner provided by the contracts with said companies and in manner necessary to enable Canadian's customers properly to furnish gas to the ultimate consumers. The further necessary effect of the failure to receive this \$561,000 will be to cause Canadian to default in its payment and other obligations under said trust indenture. Receivership, foreclosure or the enforcement of other remedies provided for in said trust indenture must necessarily be expected. It should be added, as the record shows, that the owners of the capital stock of Canadian have never received any dividends thereon, and can never receive any such dividends in the future, so long as its aforesaid "cost" contract with Colorado Interstate Gas Company remains in force and effect.

Canadian claims and submits that it will suffer great and irreparable damage by the enforcement of the Commission's Order, and earnestly submits that said Order is erroneous, and its necessary effect is and will be to deprive Canadian of its property without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

IX.

Not only will the enforcement of the Commission's Order cause Canadian the irreparable damage hereinabove shown, but a stay of its enforcement, during the period pending the preparation and filing of said petition for review in this court and the hearing, consideration and determination of said petition for review by this court will not prejudice or be detrimental to the Colorado Interstate Gas Company or to the ultimate consumers, and, in fact, for the reasons stated in the previous paragraph, such enforcement during said period will be detrimental and will prejudice the ultimate service to the ultimate consumers.

Moreover, as pointed out hereinafter, even assuming that Canadian were to put into effect immediately the reduc-

tion ordered, such reduction would inure only to the benefit of Colorado Interstate Gas Company, and not the ultimate consumers of such gas, unless the latter company passed on such reduction to its customers, and its customers (and their customers, in some instances) in turn passed on the reduction to ultimate consumers,—all of which is at least extremely speculative and doubtful, until the validity of the Commission's Order has been tested and sustained not only upon the petition of Canadian but also upon the petition of Colorado Interstate Gas Company.

X.

Should the Commission's Order of March 18, 1942, be set aside by this court upon review, there is danger that the revenues which Canadian will be deprived of, if said Order shall not be stayed up to the time said Order shall be so set aside, will be forever lost to Canadian. There is a question as to whether the Commission or the Court could make provision for the recouping by or reimbursement to Canadian of the various substantial losses which Canadian will have sustained. No provision is contained in the Natural Gas Act authorizing the Commission or the court to order such recouping or reimbursement, and Canadian may be without means of recovering or recouping such losses as a result of further rate proceedings, or otherwise. Canadian is without clear or adequate protection against the possible irrevocable loss of the amount lost represented by the reduced revenues during the period pending the preparation and filing of said petition for review in this court and the hearing, consideration and determination thereof by this court, except by declining to observe the Order during such period, in which event it might be prosecuted under the severe penal provisions of Section 21 of the Natural Gas Act. Without admitting that Canadian would be subject to such severe penalties under the circumstances confronting it Canadian respectfully urges that it should not be put to the alternative of accepting the reduction in its revenues in a very substantial amount each month, as above pointed out, with a doubtful right to recover its losses should the Order be set aside by this court on review or of defying the Order of the Commission and thus taking the risk of becoming

subject to the severe penalties in fines and imprisonment under the provisions above mentioned should the Order ultimately be upheld.

XI.

Canadian respectfully shows that to compel it to submit to the Order of the Commission and file the schedules of reduced rates and to give up said sums pending judicial review, or to disobey said Order and run the risk of such penalties pending such judicial review, in practical effect, nullifies such judicial review and operates to confiscate Canadian's property, all in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

XII.

No such emergency exists as would justify subjecting Canadian to the peril of losing its revenues in the substantial amount of \$561,000 per annum, aggregating \$46,750 per month, or of taking the risk of subjecting Canadian to the severe punishment and penalties under the provisions of Section 21 of the Natural Gas Act. In this connection Canadian points out that, as shown by the record, the Public Service Company of Colorado, which is the largest purchaser of gas from Colorado Interstate Gas Company over which the Commission has any jurisdiction, has a franchise in the City of Denver which will not expire until February, 1947, and which franchise specifically provides for the price of gas to be charged by the Public Service Company of Colorado to its customers in the City of Denver. It is manifest that the ultimate objective of the Commission and the underlying objective of the Congress in the enactment of the Natural Gas Act was and is to secure for the ultimate consumers fair and reasonable rates for natural gas. However, even if the Order of the Commission be ultimately upheld, it is apparent there can be no advantage that can possibly accrue to such ultimate consumers by reason of enforcing the rates and charges set up by the Order of the Commission dated March 18, 1942, during the period pending the review of the order by this court. Until determination of the proceedings in court for a review of the Commission's Order, neither the Public Service Company of Colorado nor the City and

County of Denver, or its electorate, would be warranted, even if legally justified in reducing rates to the ultimate consumers until it be finally determined that the Commission's Order herein entered is valid and enforceable. The same is obviously true as to the Clayton Gas Company and the other resale customers of Colorado Interstate Gas Company.

The practical effect, therefore, of the Order and the reduction in Canadian's revenues resulting from the operation of the Order pending the review by this court would be to deprive Canadian of the amount represented by the deduction in its prices and charges and transferring said sums, not to the ultimate consumers, but to Colorado Interstate Gas Company and Clayton Gas Company, neither of which has complained of Canadian's rates and charges.

XIII.

No public interest will be served by requiring Canadian to pay over sums aggregating \$46,750 per month, during the period pending the review of the Order by this court, to Colorado Interstate Gas Company and Clayton Gas Company which have not complained of Canadian's rates and charges as being unjust and unreasonable.

XIV.

Canadian possesses the 103 volumes of testimony introduced before the Commission supplied by the official reporter of the Commission and copies of the 323 exhibits introduced in evidence before the Commission. Said volumes of testimony and exhibits are hereby tendered for filing in support of and as part of this petition.

Wherefore, Canadian River Gas Company, petitioner, prays that an immediate order be entered staying the operation and effect of the Federal Power Commission's Order, dated March 18, 1942, pending the judicial review of said Order by this court in the manner provided by the Natural Gas Act. In the event this court shall find it necessary to take this petition for stay under advisement, petitioner prays that an order be entered immediately temporarily staying said Order of the Commission pending further consideration of and action by this court under this

petition. Petitioner prays for such other and further relief to which it may be entitled in the premises.

Dated this 20th day of April, 1942.

CANADIAN RIVER GAS COMPANY,

By P. C. SPENCER,

Its Vice President,

Room 2757, 630 Fifth
Avenue, New York, N. Y.

P. C. SPENCER,

Room 2757, 630 Fifth Avenue,

New York, N. Y.

CHARLES H. KEFFER,

ADKINS, PIPKIN, MADDEN & KEFFER,

930 Fisk Building,

Amarillo, Texas,

SMITH, BROCK, AKOLT & CAMPBELL,

JOHN P. AKOLT,

931 Fourteenth Street,

Denver, Colorado,

Attorneys for Canadian River Gas Company.

[Exhibits and verification omitted.]

Filed April 20, 1942. Robert B. Cartwright, Clerk.

Order Staying Order of Commission etc. Case No. 2550.

Twentieth Day, March Term, Saturday, May 16th, A. D.
1942.

Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrain, Circuit Judges.

This cause this day coming on for hearing before the court, upon the petition of Colorado Interstate Gas Company for a stay pending the completion and determination of a review of the Rate Order of the Federal Power Commission dated March 18, 1942, which Order is referred to in said petition of the petitioner, and a copy of which Order is filed herein as Exhibit "B" to said petition, and which Order was entered by said Federal Power Commission in Causes Nos. G-118, G-121 and G-124 on the Docket of said Commission, and which Order was amended by the further order of the Commission on April 22nd, 1942, to the extent

that the time for filing new schedules of rates and charges therein mentioned be changed from April 25, 1942, to May 19, 1942, and effective as to all bills regularly rendered on and after May 20, 1942. And it appearing to the Court that on May 13, 1942, the Commission, by Order entered on that date, denied the petition for rehearing that had been filed by Colorado Interstate Gas Company in said proceedings on April 14, 1942. And it further appearing to the court that each of the respondents herein has been duly served with a copy of said petition filed herein, and of notice of hearing, and the parties hereto, other than

appeared by counsel. And the court having considered the petition herein, and heard the argument of counsel thereon, does find that it is necessary for the exercise of this court's jurisdiction in the review of said order, under the Natural Gas Act, that the matter be held in status quo until the review herein, at the instance of Colorado Interstate Gas Company, is perfected and finally determined.

It is now, therefore, hereby ordered that the said Order of the Federal Power Commission, as amended as aforesaid, be and the same is hereby stayed and suspended until the further order of this Court, in so far as it is directed to or affects the petitioner, Colorado Interstate Gas Company.

It is further ordered that the Federal Power Commission and Leland Olits, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey, the persons constituting the Federal Power Commission, and their successors in office, and each and all of the other respondents, and the agents and attorneys of each and all of the respondents, be and they are hereby enjoined and restrained, until the further order of this Court, from enforcing, causing to be enforced, or attempting to enforce against the petitioner, Colorado Interstate Gas Company, the said Order of the Federal Power Commission dated March 18, 1942, entered in the above numbered causes on the docket of the Commission, as amended as aforesaid; and from taking any steps or instituting any proceedings or causing any steps to be taken or proceedings to be instituted against petitioner, Colorado Interstate Gas Company, its officers, agents or employees, to enforce any penalties, fines or other remedy for disre-

regarding said Order of March 18, 1942, as amended as aforesaid.

This Order is made upon the condition that the petitioner, Colorado Interstate Gas Company, shall pay or cause to be paid to the purchasers of natural gas under its rate schedules EPC Nos. 1-9, inclusive, referred to in said Order of the Commission, as their several interests appear, the amount representing the reduction in the gross revenues of Colorado Interstate Gas Company which shall have accrued pending a determination of this review proceeding, to the same extent as if new schedules of rates and charges had been filed by Colorado Interstate Gas Company on May 19, 1942, pursuant to said Order of the Commission, as amended, requiring a reduction in said rates and charges of not less than \$2,065,000 per year, together with all costs which may be adjudged against Colorado Interstate Gas Company should said Order of the Commission, as amended, be sustained; and as surety, and solely in lieu of bond, shall deposit with the First National Bank of Denver, Colorado, or any other Federal depository to be approved by this Court, or a Judge thereof, under an escrow agreement also to be approved by this Court, or any Judge thereof, on or before May 19, 1942, the sum of \$141,477.05, and thereafter on the 19th day of each succeeding calendar months until this review proceeding is finally determined and adjudicated, an additional sum according to the following schedule:

January	\$ 220,468.68
February	205,740.32
March	198,141.11
April	184,798.36
May	141,477.05
June	135,088.63
July	121,896.65
August	122,279.48
September	126,766.36
October	168,771.90
November	220,330.90
December	219,240.56

Total	\$2,065,000.00
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The said amounts so deposited shall remain on deposit in said bank or banks pending a determination of said review proceeding, and said deposits shall be kept in a separate account as a special deposit, and said bank or banks shall furnish each month a certificate to the Clerk of this Court, a copy thereof to the Federal Power Commission and a copy to said City and County of Denver, Colorado, that said moneys have been thus deposited, and remain on deposit as provided herein and in said escrow agreement; subject, however, to the further order or orders of this court, to be returned to such ultimate consumers of gas or persons to whom the court shall find the same should be returned as contemplated by the provisions of the natural gas act.

Nothing in this order contained shall be considered as a determination of the amounts eventually to be refunded by Colorado Interstate Gas Company upon the final determination and adjudication of said review proceedings.

The cost consisting of the escrow fee and the cost of refunding the escrow funds in the event a refund is ordered shall be assessed by the further orders of this court.

[Escrow Agreement.]

Case No. 2550.

May 18, 1942.

The First National Bank of Denver, Colorado,
Denver, Colorado.

Dear Sirs: Enclosed herewith is a certified copy of an Order of this, the Tenth Circuit Court of Appeals, made and entered May 16, 1942, in Case No. 2550, Colorado Interstate Gas Company, a corporation, Petitioner, v. Federal Power Commission, et al., Respondents, wherein Colorado Interstate Gas Company is directed to deposit with you, or some other Federal depository approved by this Court, as a special deposit, the sum of \$141,477.05 on or before May 19th, 1942, and to make monthly additional special deposits as set forth in said Order. Said special deposits are to remain on deposit pending the final determination and adjudication of the review proceedings, and are to be disbursed upon the further order of this Court, all as set forth in said Order of May 16, 1942.

Will you accept, hold and finally disburse all of said special deposits, and act as escrow agent or holder thereof all in accordance with the terms of said Order and the further orders of this Court? If so, will you acknowledge your acceptance by signing the copies of this letter at the place indicated, and return to the undersigned at once.

The Colorado Interstate Gas Company is herewith depositing the first special deposit for the month of May, by a certified check to your order in the amount of \$141,477.05.

This letter, and your acceptance of the terms hereof as indicated, will constitute the escrow agreement mentioned in the order.

Very truly yours,

ROBERT B. CARTWRIGHT,

Clerk United States Circuit
Court of Appeals, Tenth
Circuit.

Approved:

SAM G. BRATTON, Judge.

Accepted:

THE FIRST NATIONAL BANK OF DENVER, COLORADO,

By P. K. ALEXANDER, Vice President.

Filed May 18, 1942. Robert B. Cartwright, Clerk.

Stay Order, Case No. 2551.

Twentieth Day, March Term, Saturday, May 16th, A. D. 1942. Before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

This cause this day coming on for hearing before the court upon the "Petition of Canadian River Gas Company For Stay, Pending Review, of Rate Order of Federal Power Commission," filed in the above entitled cause, and it appearing to the court that each of the respondents has been duly served with a copy of said Petition and that each of the respondents has been duly notified of the hearing of said Petition at this time, and the Petitioner appearing by its attorneys, P. C. Spencer, Charles H. Keffer and

John P. Akolt, the Respondent, Federal Power Commission, appearing by its attorney, Edw. H. Lange, the Respondent, City and County of Denver, Colorado, appearing by its attorneys, Thomas Gibson and Malcolm Lindsey, the Respondent, Public Service Commission of Wyoming, not appearing, the Respondent, Colorado-Wyoming Gas Company, appearing by its attorney, Donald C. McCreery, the Respondent, Public Service Company of Colorado not appearing, and the Respondent, Colorado Interstate Gas Company, appearing by its attorneys, Wm. A. Dougherty and E. R. Campbell, and the court having considered said Petition and heard argument of counsel thereon, and being now sufficiently advised in the premises,

The Court Does Now Hereby Find that the granting of said petition for stay is proper and necessary in aid of the jurisdiction of this court on review under the provisions of the Natural Gas Act of the order of the Respondent, Federal Power Commission, hereinafter referred to.

It Is Now Therefore Hereby Ordered That the Order of the Respondent, Federal Power Commission, dated the 18th day of March, 1942, which Order is referred to in said Petition of the Petitioner, Canadian River Gas Company, filed herein, and copy of which Order is filed in this Court as Exhibit B to said Petition, and which Order was entered by the Respondent, Federal Power Commission, in Causes Nos. G-118, G-121, and G-124 on the docket of said Respondent Commission, as said Order of March 18, 1942 was amended by the further order of the Respondent Commission, dated April 22, 1942, extending the time for the filing of the new schedule of rates and charges provided in said Order to May 19, 1942, to become effective as to all bills regularly rendered on and after May 20, 1942, be, and the same is hereby stayed and suspended until further order of this Court in so far as it is directed to or affects the Petitioner, Canadian River Gas Company.

It Is Further Hereby Ordered That the Respondent, Federal Power Commission, and Leland Olds, Claud L. Draper, Basil Manly, John W. Scott, and Clyde L. Seavey, the persons constituting the Federal Power Commission, and their successors in office, and each and all of the other respond-

ents, and the agents and attorneys of each and all of the respondents, be, and they are hereby enjoined and restrained, until further order of this court, from enforcing, causing to be enforced, or attempting to enforce against the Petitioner, Canadian River Gas Company, the said Order of the Respondent, Federal Power Commission, dated March 18, 1942, entered in the above numbered causes on the docket of the Commission, as so amended by the further order of the Commission of April 22, 1942, and from taking any steps or instituting any proceedings, or causing any steps to be taken or proceedings to be instituted, against the Petitioner, Canadian River Gas Company, its officers, agents or employees, to enforce any penalties, fines or other remedy for disregarding the said Order of March 18, 1942, as so amended by the further order of the Commission of April 22, 1942.

This order will become effective upon the execution and delivery to the Clerk of this Court by Petitioner of its personal bond in the penal sum of Five Hundred Sixty-one Thousand Dollars (\$561,000) conditioned upon its refunding to the Respondent, Colorado Interstate Gas Company and to Clayton Gas Company, respectively, the amounts represented by the reduction in revenues of the Petitioner, Canadian River Gas Company, as directed by the Respondent, Federal Power Commission, in its Order dated March 18, 1942, as so amended by the further order of the Commission, dated April 22, 1942, together with all costs that may be adjudged against Petitioner, Canadian River Gas Company, if said Order, as so amended, shall be sustained.

Nothing in this Order contained shall be considered as a determination of the amounts eventually to be refunded by Canadian River Gas Company upon the final determination and adjudication of said review proceeding.

It Is Further Hereby Ordered That this Order be served by the Clerk of this Court upon each of the Respondents by mailing a copy hereof to each of said Respondents.

Filed May 16, 1942. Robert B. Cartwright, Clerk

[A bond for stay order in case No. 2551, dated May 15, 1942, was approved by the clerk and filed May 16, 1942.]

Motion to Dismiss, Case No. 2550.

Comes now the City and County of Denver appearing by its Attorneys, Malcolm Lindsey and Thomas H. Gibson, specially for the purposes of this motion, and not generally, in its own behalf and in behalf of such other of the respondents herein as may see fit to appear in this behalf and participate in this motion, and moves the court as follows:

1. To dismiss the petition herein on the ground that it is in the wrong circuit, because (a) the jurisdiction of this court is invoked solely on the grounds that Section (19b) of the Natural Gas Act of June 21, 1938, c556, 52 Stat. 833; Section 717r(b), Title 15 U. S. C. A., provides that:

"Any party to a proceeding under this Act (chapter) aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, * * * "

and it appears upon the face of said petition that:

(a1) Petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(a2) Said petition fails to allege that said company is located in the tenth circuit for which your honorable circuit court of appeals, sitting as a federal court, has and may take jurisdiction as in such cases is made and provided by said natural gas act.

(a3) Said petition fails to allege its principal place of business or any facts to show the place of said company's location or its principal place of business other than that petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(b) It affirmatively appears on the face of said petition that said petitioner is not located in and that it does not have its principal place of business within said circuit.

(c) It affirmatively appears upon the face of the record in said cause by the testimony of the petitioner's own

witness and by facts dehors the record that it is not located and that it does not have its principal place of business in said circuit; and this said respondent is ready to verify.

MALCOLM LINDSEY,

THOMAS H. GIBSON,

Attorneys for Respondent, City
and County of Denver,
353 City and County Bldg.,
Denver, Colorado.

Filed Aug. 8, 1942. Robert B. Cartwright, Clerk.

Motion to Dismiss, Case No. 2551.

Comes now the City and County of Denver appearing by its Attorneys, Malcolm Lindsey and Thomas H. Gibson, specially for the purposes of this motion, and not generally, in its own behalf and in behalf of such other of the respondents herein as may see fit to appear in this behalf and participate in this motion, and moves the court as follows:

1. To dismiss the petition herein on the ground that it is in the wrong circuit, because (a) the jurisdiction of this court is invoked solely on the grounds that Section (19b) of the Natural Gas Act of June 21, 1938, c556, 52 Stat. 833; Section 717r(b), Title 15 U. S. C. A., provides

"Any party to a proceeding under this Act (chapter) aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, * * *

and it appears upon the face of said petition that:

(a1) Petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(a2) Said petition fails to allege that said company is located in the tenth circuit for which your honorable circuit court of appeals, sitting as a federal court, has and may take jurisdiction as in such cases is made and provided by said natural gas act.

(a3) Said petition fails to allege its principal place of business or any facts to show the place of said company's location or its principal place of business other than that petitioner is a private corporation organized and existing under the laws of the State of Delaware.

(b) It affirmatively appears on the face of said petition that said petitioner is not located in and that it does not have its principal place of business within said circuit.

(c) It affirmatively appears upon the face of the record in said cause by the testimony of the petitioner's own witness and by facts dehors the record that it is not located and that it does not have its principal place of business in said circuit; and this said respondent is ready to verify.

MALCOLM LINDSEY,

THOMAS H. GIBSON,

Attorneys for Respondent, City
and County of Denver,
353 City and County Bldg.,
Denver, Colorado.

Filed Aug. 8, 1942. Robert B. Cartwright, Clerk.

Order Denying Motions to Dismiss Petitions and
Amended Petitions, Cases No. 2550 and 2551.

Sixth Day, September Term, Monday, September 14th,
A. D. 1942. Before Honorable Sam G. Bratton, Honorable
Walter A. Huxman and Honorable Alfred P. Murrah, Cir-
cuit Judges.

These causes came on to be heard on motions to dismiss the petitions for review filed herein by petitioners, Thomas H. Gibson, Esquire, appearing for City and County of Denver, John P. Akolt, Esquire, appearing for Colorado Interstate Gas Company and Canadian River Gas Company, Donald McCreery, Esquire, appearing for Colorado-Wyoming Gas Company.

By leave of court, petitioners Colorado Interstate Gas Company and Canadian River Gas Company were granted leave to file amendments to their petitions for review. The motions to dismiss filed by the City and County of Denver

were renewed as to the petitions of the Colorado Interstate Gas Company and Canadian River Gas Company, as amended. Thereupon the causes were argued to the court.

On consideration whereof, it is now here ordered that the said motions to dismiss the petitions for review of the Colorado Interstate Gas Company, as amended, the Canadian River Gas Company, as amended, and the Colorado-Wyoming Gas Company be and the same are hereby denied.

Amendment to "Petition of Colorado Interstate Gas Company to Review and Set Aside an Order of the Federal Power Commission," Case No. 2550.

Comes Now Colorado Interstate Gas Company, Petitioner herein, and, permission of court being first had and obtained, amends its Petition to Review filed herein by adding at the end of Subdivision B of said Petition appearing on page 11 thereof, captioned, "The Facts and Statute Upon Which Venue Is Based," the following:

The properties of Canadian River Gas Company and Petitioner, Colorado Interstate Gas Company, are now, and at all times since the year 1928 have been, operated as a unit. Since June 15, 1936, Robert W. Hendee has been General Manager of each of said companies, and during all of said period he has resided in Colorado Springs, Colorado, and during all of said period Colorado Interstate Gas Company and Canadian River Gas Company have jointly maintained an office in the Colorado Springs National Bank Building in Colorado Springs, Colorado, under the charge of the said General Manager, from where the supervision, direction and management of the affairs of both of said companies have been conducted.

At the present time there are approximately thirty-six (36) employees in the office of the General Manager at Colorado Springs, Colorado. There has been substantially the same number for several years. Some of said employees devote their entire time to the business of Colorado Interstate Gas Company, and their entire salaries are paid by Colorado Interstate Gas Company, and the time of the remainder of said employees is devoted partly to the work of Colorado Interstate Gas Company and partly to the work of Canadian River Gas Company; and their salaries are paid

partly by each company. The compensation of the General Manager is paid in part by each of said companies.

All of the gas purchased by Colorado Interstate Gas Company is purchased from Canadian River Gas Company, and all of said gas is delivered by said Canadian River Gas Company to Colorado Interstate Gas Company in territory included in the Tenth Circuit. Part of said gas is transported by Canadian River Gas Company from the Texas Panhandle Field in Texas through Canadian River Gas Company's own pipe line to Clayton Junction, New Mexico, where it is delivered to Colorado Interstate Gas Company and where title passes to Colorado Interstate Gas Company. The remaining part of said gas is transported by Canadian River Gas Company from the field in Texas, through facilities leased by Canadian River Gas Company, to Gray, Oklahoma, where it is delivered to Colorado Interstate Gas Company and where title passes to Colorado Interstate Gas Company.

All of the customers to whom Colorado Interstate Gas Company sells the gas so purchased by it from Canadian River Gas Company are located in the territory included in the Tenth Circuit, namely, either Colorado or Oklahoma, and all of said gas sold by Colorado Interstate Gas Company is delivered by it to the purchasers thereof, either in Colorado or Oklahoma.

All of the physical properties of Colorado Interstate Gas Company are located either in Colorado or New Mexico.

All contracts of Colorado Interstate Gas Company with its customers and applications for service are made and acted on at its Colorado Springs, Colorado, office. All bills for gas sold by Colorado Interstate Gas Company are rendered out of the Colorado Springs office. The Purchasing Agent for said company, as well as Canadian River Gas Company, has his office in Colorado Springs where all major purchases are made, and all bills for materials purchased by both companies are paid by vouchers issued out of the Colorado Springs office. All of the dealings between Canadian River Gas Company and Colorado Interstate Gas Company in connection with purchase and sale of gas are handled in and through the Colorado Springs office, and bills for said gas are rendered from the Colorado Springs

office, and all payments for said gas are made in Colorado Springs. All audits of gas sold and accounting are made out of the Colorado Springs office, including the gas sold to Natural Gas Pipe Line Company of America, which is delivered at Gray, Oklahoma. Moneys received for the sale of gas (except gas sold to Natural Gas Pipe Line Company of America) are deposited in Colorado Springs, Colorado, banks, and, to the extent necessary, used to defray all operating expenses of the company and taxes, including federal income taxes. All general books, books of accounts, and property records are kept in the Colorado Springs office under the supervision of Assistant Treasurer Shields. For a long number of years, at least as far back as 1936, all contracts for sale of gas have been negotiated by the General Manager in Colorado. Correspondence with customers is conducted out of the Colorado Springs office.

The names and addresses of the officers and directors of Colorado Interstate Gas Company are as follows:

Officers:

F. H. Lerch, Jr., President, New York, N. Y.
A. R. Jones, Vice Pres., Kansas City, Mo.
W. A. Dougherty, Vice Pres., New York, N. Y.
Jas. Comerford, Treasurer, New York, N. Y.
J. O. Shields, Asst. Treasurer, Colo. Springs, Colo.
E. E. Duvall, Secretary, New York, N. Y.
Jas. Comerford, Asst. Secretary, New York, N. Y.

Directors:

N. K. Moody, Tulsa, Oklahoma.
A. R. Jones, Kansas City, Mo.
F. H. Lerch, Jr., New York, N. Y.
P. C. Spencer, New York, N. Y.
W. A. Dougherty, New York, N. Y.
E. E. Duvall, New York, N. Y.
Chas. Frueauff, New York, N. Y.

As shown above, certain officers of Colorado Interstate Gas Company reside in New York. These officers perform their duties as such officers in part in New York and at times in the Colorado Springs office or at other places outside of New York. No office, as such, for Colorado Interstate Gas Company is maintained in New York. There is a

service company, known as Gas Companies, Inc., having offices in New York, which exists for the purpose of rendering service to various natural gas companies in which Standard Oil Company of New Jersey has an interest, and such service as is rendered by the said officers to Colorado Interstate Gas Company is through said service company, Gas Companies, Inc.

Colorado Interstate Gas Company does not maintain an office in the State of Delaware, except the statutory office for service of process required by the Delaware laws, and does not transact business of any kind in the State of Delaware, and its only business is the production and sale of gas, as above stated. The Certificate of Incorporation and By-laws of said company provide for carrying on business and having offices within or without the State of Delaware, and for the holding of meetings of stockholders and directors within and without the State of Delaware, and the meetings of the stockholders and directors of said company are held without the State of Delaware.

Colorado Interstate Gas Company is located and has its principal place of business in this Tenth Circuit.

(. COLORADO INTERSTATE GAS COMPANY,
By WILLIAM A. DOUGHERTY,
C. W. COOPER,
Room 2839, 30 Rockefeller
Plaza, New York, N. Y.
ELMER L. BROCK,
E. B. CAMPBELL,
931 Fourteenth Street,
Denver, Colorado;
Its Attorneys.

[Verification omitted.]

Filed September 14, 1942. Robert B. Cartwright, Clerk.

Amendment to "Petition of Canadian River Gas Company to Review and Set Aside an Order of the Federal Power Commission," Case No. 2551.

Comes Now Canadian River Gas Company, Petitioner herein, and, permission of court being first had and obtained, amends its Petition to Review filed herein by adding at the

end of the subdivision of said Petition appearing on page 7 thereof captioned, "The Facts and Statute Upon Which Venue Is Based," the following:

The properties of Colorado Interstate Gas Company and Petitioner, Canadian River Gas Company, are now, and at all times since the year 1928 have been operated as a unit. Since June 15, 1936, Robert W. Hendee has been General Manager of each of said companies, and during all of said period he has resided in Colorado Springs, Colorado, and during all of said period Canadian River Gas Company and Colorado Interstate Gas Company have jointly maintained an office in the Colorado Springs National Bank Building in Colorado Springs, Colorado, under the charge of the said General Manager, from where the supervision, direction and management of the affairs of both of said companies have been conducted.

At the present time there are approximately thirty-six (36) employees in the office of the General Manager at Colorado Springs, Colorado. There has been substantially the same number for several years. Some of said employees devote their entire time to the business of Colorado Interstate Gas Company and their entire salaries are paid by Colorado Industrial Gas Company, and the time of the remainder of said employees is devoted partly to the work of Colorado Interstate Gas Company and partly to the work of Canadian River Gas Company, and their salaries are paid partly by each company. The compensation of the General Manager is paid in part by each of said companies.

Said General Manager is in charge of all of the operations of Canadian River Gas Company, including the operations of its gas fields which are located in the State of Texas. Canadian River Gas Company maintains a field operating office in Amarillo, Texas, which, however, is also in charge of said General Manager. The Chief Dispatcher, who keeps in constant touch with the expected demands for gas and who, in turn, gives orders for the amount of gas to be piped, has his office in Colorado Springs, Colorado, and is under the supervision of said General Manager.

Of the total gas sales made by Canadian River Gas Company in the year 1939 in excess of 41,000,000 Mcf., all but approximately 4,600,000 Mcf. sold to Amarillo Oil Company.

in Texas and approximately 93,000 Mcf. sold to Clayton Gas Company in New Mexico was sold by Canadian River Gas Company to Colorado Interstate Gas Company. As of the present time, the ratio of sales to Colorado Interstate Gas Company out of Canadian River Gas Company's total sales would be greater. The gas sold by Canadian River Gas Company to Colorado Interstate Gas Company is delivered to Colorado Interstate Gas Company at two points. Part of said gas is transported by Canadian River Gas Company from the field in Texas through Canadian River Gas Company's own pipe line to Clayton Junction, New Mexico, where it is delivered to the Colorado Interstate Gas Company and where title passes to Colorado Interstate Gas Company. The remaining part of said gas is transported by Canadian River Gas Company from the field in Texas through facilities leased by Canadian River Gas Company to Gray, Oklahoma, where it is delivered to Colorado Interstate Gas Company and where title passes to Colorado Interstate Gas Company.

The small sales made by Canadian River Gas Company to Clayton Gas Company represent gas transported by Canadian River Gas Company through its own pipe line into New Mexico, where it is delivered to the Clayton Gas Company in Clayton, New Mexico.

The principal bank account of Canadian River Gas Company is kept in banks in Colorado Springs, Colorado. It has no other bank account except a comparatively small revolving fund, which is maintained in Amarillo, Texas, in connection with the field operations. The principal disbursements of Canadian River Gas Company are made from its Colorado Springs, Colorado, office, and its principal or general books of account during all of said period have likewise been kept in the Colorado Springs office. These principal books include everything except records required to be kept in connection with field operations. The books of account are kept under the direction of J. O. Shields, who is Assistant Treasurer of the company and who maintains his office in the Colorado Springs office. The Purchasing Agent for both companies has his office in Colorado Springs.

where all major purchases are made, and all bills for materials purchased by both companies are paid by vouchers issued out of the Colorado Springs office. All of the dealings between Canadian River Gas Company and Colorado Interstate Gas Company in connection with the purchase and sale of gas are handled in and through the Colorado Springs office, and bills for said gas are rendered from the Colorado Springs office, and all payments for said gas are made in Colorado Springs.

All of the physical properties of Colorado Interstate Gas Company are located in Colorado and New Mexico. All gas purchased by Colorado Interstate Gas Company is purchased and received by it in the states of New Mexico or Oklahoma; all gas sold by Colorado Interstate Gas Company is sold by it in the states of Colorado and Oklahoma.

All of the gas which is covered by the reduction order made by the Commission to which this Petition to Review is directed is delivered to Colorado Interstate Gas Company and to Clayton Gas Company as the purchasers thereof from Canadian River Gas Company in territory included in the Tenth Circuit.

All contacts of Colorado Interstate Gas Company with its customers and applications for service are made and acted on at the Colorado Springs office. All bills for gas sold by Colorado Interstate Gas Company are rendered out of the Colorado Springs office. All audits of gas sold and accounting are made out of the Colorado Springs office, including the gas sold to the Natural Gas Pipe Line Company. Monies received for sale of gas (except gas sold to Natural Gas Pipe Line Company of America) are deposited in Colorado Springs, Colorado, banks, and, to the extent necessary, used to defray all operating expenses of the company and taxes, including federal income taxes. All general books, books of accounts, and property records are kept in the Colorado Springs office under the supervision of Assistant Treasurer Shields.

Since at least the year 1936 all contracts for the sale of gas entered into by Colorado Interstate Gas Company have

been negotiated by said General Manager Hendee in Colorado, and correspondence with customers is conducted out of said Colorado Springs office.

The names and addresses of the officers and directors of Canadian River Gas Company are as follows:

Officers:

N. K. Moody, President, Tulsa, Oklahoma.
 P. C. Spencer, Vice Pres., New York, N. Y.
 A. R. Jones, Vice Pres., Kansas City, Mo.
 R. E. Wertz, Vice Pres., Amarillo, Texas.
 Geo. Baird, Secretary and Treasurer, New York, N. Y.
 J. O. Shields, Asst. Treasurer, Colo. Springs, Colo.
 W. M. Wright, Asst. Secretary, Amarillo, Texas.
 E. A. Sickels, Asst. Secretary, Tulsa, Oklahoma.

Directors:

N. K. Moody, Tulsa, Oklahoma.
 P. C. Spencer, New York, N. Y.
 A. R. Jones, Kansas City, Mo.
 R. E. Mullin, Kansas City, Mo.
 E. A. Sickels, Tulsa, Oklahoma.

None of the above officers and directors maintains an office for the transaction of business of Canadian River Gas Company except J. O. Shields, Assistant Treasurer, in Colorado Springs, Colorado, and Geo. Baird in New York to the extent that he has custody of the minute books and other corporate records of that character.

Canadian River Gas Company does not maintain an office in the State of Delaware, except the statutory office for service of process required by the Delaware laws, and does not transact business of any kind in the State of Delaware, and its only business is the production and sale of gas, as above stated. The Certificate of Incorporation and By-laws of said company provide for carrying on business and having offices within or without the State of Delaware, and for the holding of meetings of stockholders and directors within and without the State of Delaware, and the meetings

of the stockholders and directors of said company are held without the State of Delaware.

Canadian River Gas Company is located and has its principal place of business in this Tenth Circuit.

CANADIAN RIVER GAS COMPANY,

By P. C. SPENCER,

Room 2759, 630 Fifth Ave.,
New York, N. Y.

ADKINS, PIPKIN, MADDEN & KEFFER,

By CHARLES H. KEFFER,

903 Fisk Bldg., Amarillo,
Texas.

SMITH, BROCK, AKOLT & CAMPBELL,

By JOHN P. AKOLT,

931 Fourteenth Street,
Denver, Colorado.

Its Attorneys.

[Verification omitted.]

Filed September 14, 1942. Robert B. Cartwright, Clerk.

Order Extending Time for Designation of Printed
Record, Etc., Case No. 2550.

Forty-third Day, March Term, Tuesday, July 14th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

It appearing to the court that the petition of the petitioner in this cause is to review and set aside an order of the Federal Power Commission and that in cause No. 2551 on the docket of this court Canadian River Gas Company, as petitioner, has likewise filed a petition to review and set aside an order of the Federal Power Commission directed to said Canadian River Gas Company and entered in the same dockets before the said Commission; and it further appearing to the court that in cause No. 2561 on the docket of this court Colorado-Wyoming Gas Company has also filed a petition to review and set aside an order of the Federal Power Commission directed to it and entered in the same dockets before the said Commission; and it further appearing to the court that under Rule 34 of the rules of this court a single record on review should be prepared

in this cause and in said causes Nos. 2551 and 2561 containing all matter designated by all parties to said three proceedings without duplication; and it further appearing from telegrams, the originals or copies of which are on file with the clerk of this court, that in each of said three causes the petitioner therein and the respondent, Federal Power Commission, in the interest of saving both time and expense and for the purpose of affording time to enable the parties to attempt to agree upon the portions of the transcript to be included in the printed record, have agreed to an extension of time for the filing of the transcript of the record by the Federal Power Commission in said three causes and for an extension of time for the designation of the portion of the record to be printed;

Now, therefore, it is hereby ordered:

1. That a single record on review shall be filed by the Federal Power Commission in said three causes pending herein.

2. That the respondent, Federal Power Commission, shall have to and including the 10th day of September, 1942, within which to certify and file with this court the transcript of record upon which the orders entered by the Federal Power Commission in said three proceedings are now sought to be reviewed in this court.

3. That the petitioner herein shall have to and including the 10th day of October, 1942, within which to file its designation of the portions of the transcript it desires to be contained in the printed record.

4. That the respondents herein and any intervener herein entitled under the rules of this court to participate in the designation of the record, shall have to and including the 10th day of November, 1942, within which to designate such additional portions of the transcript as they desire to be included in the printed record.

5. That the petitioner herein shall thereupon have to and including the 25th day of November, 1942, within which to designate such further parts of the transcript of the record which are to be contained in the printed record.

Order Extending Time for Designation of Printed
Record, Etc., Case No. 2551.

Forty-third Day, March Term, Tuesday, July 14th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

It appearing to the court that the petition of the petitioner in this cause is to review and set aside an order of the Federal Power Commission and that in cause No. 2550 on the docket of this court Colorado Interstate Gas Company, as petitioner, has likewise filed a petition to review and set aside an order of the Federal Power Commission directed to said Colorado Interstate Gas Company and entered in the same dockets before the said Commission; and it further appearing to the court that in cause No. 2561 on the docket of this court Colorado-Wyoming Gas Company has also filed a petition to review and set aside an order of the Federal Power Commission directed to it and entered in the same dockets before the said Commission; and it further appearing to the court that under Rule 34 of the rules of this court a single record on review should be prepared in this cause and in said causes Nos. 2550 and 2561 containing all matter designated by all parties to said three proceedings without duplication; and it further appearing from telegrams, the originals or copies of which are on file with the clerk of this court, that in each of said three causes the petitioner therein and the respondent, Federal Power Commission; in the interest of saving both time and expense and for the purpose of affording time to enable the parties to attempt to agree upon the portions of the transcript to be included in the printed record, have agreed to an extension of time for the filing of the transcript of the record by the Federal Power Commission in said three causes and for an extension of time for the designation of the portion of the record to be printed;

Now, therefore, it is hereby ordered:

1. That a single record on review shall be filed by the Federal Power Commission in said three causes pending herein.

2. That the respondent, Federal Power Commission, shall have to and including the 10th day of September, 1942,

within which to certify and file with this court the transcript of record upon which the orders entered by the Federal Power Commission in said three proceedings are now sought to be reviewed in this court.

3. That the petitioner herein shall have to and including the 10th day of October, 1942, within which to file its designation of the portions of the transcript it desires to be contained in the printed record.

4. That the respondents herein, and any intervenor herein entitled under the rules of this court to participate in the designation of the record, shall have to and including the 10th day of November, 1942, within which to designate such additional portions of the transcript as they desire to be included in the printed record.

5. That the petitioner herein shall thereupon have to and including the 25th day of November, 1942, within which to designate such further parts of the transcript of the record which are to be contained in the printed record.

Order Extending Time for Designation of Printed
-Record, Cases Nos. 2550 and 2551.

Fourteenth Day, September Term, Monday, October 5th,
A. D. 1942. Before Honorable Orie L. Phillips, Circuit
Judge, and Honorable J. Foster Symes, District Judge.

These causes came on to be heard on the motion of petitioners for an extension of time within which to file a stipulation or designation of the parts of the record to be printed herein and were submitted to the court.

On consideration whereof, counsel for respondent, Federal Power Commission, consenting thereto, it is now here ordered by the court that the said motion be and the same is hereby granted and that the time within which petitioners may file a stipulation or designation of the parts of the record to be printed herein be and the same is hereby extended to and including the 25th day of November, 1942.

Order Extending Time for Designation of Printed
Record, Cases Nos. 2550 and 2551.

Thirty-ninth Day, September Term, Tuesday, November 24th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

These causes came on to be heard on the application of petitioners for an extension of the time within which a stipulated designation of the parts of the record to be printed herein may be filed in these causes and were submitted to the court.

On consideration whereof, it is now here ordered by the court that said application be and the same is hereby granted and that the time within which a stipulated designation of the parts of the record to be printed herein may be filed in these causes be and the same is hereby extended to and including the 10th day of December, 1942.

Stipulation for and Designation of Printed Record.

Now comes Colorado Interstate Gas Company, Canadian River Gas Company, and Federal Power Commission, sometimes hereinafter referred to as Canadian, Colorado Interstate, and the Commission, respectively, and the other parties to the review proceedings above captioned, whose joinder herein is indicated by their signatures hereto, and stipulate that the printed record in the review proceedings above captioned shall contain the following, and the undersigned hereby designate the following as the printed record in the above captioned review proceedings:

[In conformity with the order of the United States Circuit Court of Appeals, infra, the remaining portion of the stipulated designation of the printed record, with the exception of the items thereof which follows, is omitted.]

388-A—"It is agreed that all headings and subheadings employed in this Stipulation have been inserted for the convenience of counsel, and that these headings and subheadings do not constitute any part of the evidence in this proceedings."

389—"It is expressly stipulated that in the event any of the parties hereto shall find it necessary or proper to appeal to

the Official Transcript filed with the court by the Commission, the filing of this Stipulation, and the printed record in pursuance thereof, shall in no wise prejudice its right to do so. In the event of a controversy as to the construction of any part of the narrative included in the record to be printed, it is expressly stipulated that the Official Transcript shall govern.

Dated the 9th day of December, A. D. 1942.

COLORADO INTERSTATE GAS COMPANY,
By WM. A. DOUGHERTY,
C. W. COOPER,
ELMER L. BROCK,
E. R. CAMPBELL,
Its Attorneys.

CANADIAN RIVER GAS COMPANY,
By P. C. SPENCER,
CHARLES H. KEFFER,
JOHN P. AKOLT,
Its Attorneys.

FEDERAL POWER COMMISSION,
By EDWARD H. LANGE,
Its Attorneys.

COLORADO-WYOMING GAS COMPANY,
By DONALD C. MCCREERY,
LEE, SHAW & MCCREERY,
WM. A. BRYAN'S III,
JOHN C. PICKETT,
Its Attorneys.

PUBLIC SERVICE COMPANY OF
COLORADO,
By LEE, SHAW & MCCREERY,
DONALD C. MCCREERY,
Its Attorneys.

Filed December 9, 1942. Robert B. Cartwright, Clerk.

Order, Designation of Record Not to Appear in
Printed Record, Cases Nos. 2550 and 2551.

Forty-seventh Day, September Term, Friday, December 11th, A. D. 1942. Before Honorable Orie L. Phillips, Circuit Judge, and Honorable J. Foster Symes, District Judge.

These causes came on to be heard on the application of petitioners for leave to have the stipulated designation of the record omitted from the printed record in these causes and were submitted to the court.

On consideration whereof, it is now here ordered by the court that that part of paragraph 5, subdivision (d), of rule 34, which provides that the printed record shall contain among other things the designations or stipulations as to the contents of the record, be and the same is hereby waived and that the record in these causes be printed without the inclusion therein of the stipulated designation.

Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the January and May Terms, 1944, of said Court, before Honorable Sam G. Bratton, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

On the 9th day of September, A. D. 1942, a transcript of the record, pursuant to petitions to review and set aside orders of the Federal Power Commission, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Colorado Interstate Gas Company, a corporation, was petitioner, and Federal Power Commission et al. were respondents, and in a certain cause wherein Canadian River Gas Company, a corporation, was petitioner, and Federal Power Commission et al. were respondents, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

BEFORE THE FEDERAL POWER COMMISSION

In the Matter of

CANADIAN RIVER GAS COMPANY, COLORADO INTERSTATE GAS COMPANY AND COLORADO-WYOMING GAS COMPANY, DOCKET NO. G-124; CITY AND COUNTY OF DENVER, COLORADO, COMPLAINANT V. PUBLIC SERVICE COMPANY OF COLORADO ET AL., DEFENDANTS, DOCKET NO. G-118.

Opinion No. 73.

[Caption Omitted.]

These proceedings are an outgrowth of an investigation instituted by the Commission on March 14, 1939, into the reasonableness of the rates and charges of the respondent companies, following the filing of petitions therefor by the City and County of Denver, Colorado, and by the Public Service Commission of Wyoming.

On April 12, 1939, Canadian River Gas Company¹ and Colorado Interstate Gas Company², filed with the Commission an application for a rehearing and stay of said order of investigation; and on April 13, 1939, Colorado-Wyoming Gas Company³ filed with the Commission a motion to set aside the same. On May 9, 1939, the Commission issued its order denying the application of the Canadian and Colorado Companies, and also entered a separate order denying the motion of the Wyoming Company.

On July 7 1939 Canadian Company and Colorado Company filed their petition for review of the Commission's

¹Hereinafter sometimes referred to as "Canadian Company";

²Hereinafter sometimes referred to as "Colorado Company";

³Hereinafter sometimes referred to as "Wyoming Company."

order of March 14, 1939, with the United States Circuit Court of Appeals for the Tenth Circuit. The Commission thereupon filed its motion to dismiss the petition. The Circuit Court of Appeals, by its decision of March 4, 1940, directed a dismissal of the petition for review. The Companies' petition for rehearing was denied by the court on July 24, 1940 (113 Fed. (2d) 1010); and certiorari was denied by the United States Supreme Court on October 28, 1940 (311 U. S. 693).

On September 13, 1940, the Commission consolidated these proceedings and ordered a public hearing to be held on October 28, 1940, in Denver, Colorado.

At the hearings, which consumed 102 hearing days, and closed on April 21, 1941, after one short recess, each of the respondent companies was afforded ample opportunity to and did present evidence. In addition, evidence was also offered by the City of Denver, Colorado, and by members of this Commission's staff. The transcript of the testimony in excess of 15,000 pages and over 300 exhibits clearly shows the extent and volume of the record.

Petition to Reopen Proceedings.

On March 14, 1942 Canadian and Colorado companies each filed a petition to reopen proceedings to take further evidence. Both petitions rely on the same general contentions for support. In the main these contentions are that taxes, wages and material costs have increased since the close of the proceedings and that additions to property have been greater than originally estimated. The Mayor of the City and County of Denver in a letter received March 17, 1942 and the Wyoming Public Service Commission in a telegram dated March 18, from its Chairman, have strenuously opposed granting of the petitions and the reopening of the proceedings. This Commission is fully aware of the recent trends in costs. It is also aware of the recent trends in revenues although no mention of revenues is made in the petitions. Due consideration has been given to these factors in the orders entered in these proceed-

ings. That full account has been taken of the relevant contentions by the companies is apparent in the discussion of these factors in this opinion.

History and Operations of Companies.

The Canadian and Colorado Companies are separate corporate entities; but the properties of the two companies have, since their inception, been operated as a single enterprise. The incorporation of these two companies and the acquisition and construction of their properties were the result of a "Memorandum of Stipulations Agreed Upon Between Southwestern Development Company, Cities Service Company, and Standard Oil Company (N. J.)." The primary objectives of the undertaking were the production of natural gas in the Texas Panhandle field and its transportation to the city gate of Denver for sale to the Public Service Company of Colorado and for the supplying of natural gas to Colorado Fuel and Iron Corporation at Pueblo, Colorado, enroute to Denver. The obtaining of these two markets was the essential prerequisite of the construction of the Canadian Company-Colorado Company pipe line sometimes referred to as the "Denver" line.

As a part of its obligations under the aforesaid stipulation, Southwestern Development Company caused Canadian Company to be incorporated under the laws of the State of Delaware on February 24, 1928, with broad powers to carry on business in gas oil and other extractive enterprises and qualified it to do business in the States of Texas New Mexico, and Oklahoma. All of Canadian's capital stock, excepting directors' qualifying shares, was issued to Southwestern Development Company.

Also pursuant to the aforesaid stipulation, Colorado Company was incorporated under the laws of the State of Delaware on June 8, 1927, with broad powers to carry on business in natural gas, artificial gas, oils, and other extractive enterprises and qualified it to do business in the States of New Mexico, Oklahoma, and Colorado.

Canadian Company does not purchase any natural gas.

but produces from its own wells all of its requirements. It holds gas rights under oil and gas leases on approximately 315,000 acres of land in the Texas Panhandle field and had in operation on December 31, 1939, a total of 94 gas wells. Its gathering system consists of 144 miles of various sizes of pipe. It owns and operates a field compressing station near Fritch, Texas; the Bivins compressor station through which gas is transported to Clayton Junction approximately 35 miles north of the City of Amarillo, Texas; a gasoline extraction plant and a dehydration plant. The Canadian Company sells gas to the following affiliated companies: Amarillo Oil Company, Clayton Gas Company and Colorado Interstate Gas Company. Out of a total of about 46,000,000 MCF of gas sold for resale in 1939, approximately 41,000,000 MCF were sold to the Colorado Interstate Gas Company.

Canadian Company is engaged in the production, gathering, transportation, and sale of natural gas. It produces gas from its leaseholds in the Panhandle gas field in the State of Texas, gathers such gas in the field and after compressing it, (a) sells and transports in interstate commerce a portion of it through its main 22-inch transmission line, a distance of approximately 86 miles to a point in New Mexico known as Clayton Junction where the gas so transported is delivered to Colorado Company and to Clayton Gas Company, and (b) transports a portion of it through the facilities of Texoma Natural Gas Company to a point in Oklahoma known as Gray Junction where the gas so transported is also sold to Colorado Company.

The Canadian Company is obligated to supply the entire natural gas requirements of Colorado Company for a period of 20 years from and after the initial delivery of gas to Public Service Company of Colorado which was made on June 23, 1928, "and so long thereafter as seller has available for delivery to buyer hereunder quantities of natural gas which buyer determines are profitable for it to buy under the terms of this contract."

Construction of the main transmission line of Colorado Company was completed in June 1928. The line begins

at Clayton Junction, New Mexico; at the terminus of the transmission pipe line of the Canadian Company and extends in a northwesterly direction approximately 254 miles through New Mexico into the State of Colorado to the outskirts of the City of Denver, Colorado. The line consists of 20-inch and 22-inch Dresser coupled steel pipe. Various laterals extend from the main line to customers of the company, including a 16-inch lateral to the plant of the Colorado Fuel and Iron Corporation near Pueblo, Colorado, and one near the terminus of the line at Denver, Colorado, for the purpose of making deliveries to Wyoming Company at a point near Littleton, Colorado. On December 31, 1939, Colorado Company owned and operated three compressing stations known as Clayton Station, Canyon Station, and Devine Station.

On October 15, 1931, Colorado Company and Natural Gas Pipeline Company of America entered into an agreement which provides for the sale by Colorado Company to the latter of 25 per cent of the total requirements of the latter company's pipe line having as its destination what it known as the "Chicago" market. The gas so purchased is produced by Canadian Company and transported from the field through the 24-inch main transmission line of Texoma Natural Gas Company (an affiliate of the Natural Gas Pipeline Company of America) from Fritch compressing station to Gray Junction, Oklahoma. Colorado Company does not own, lease, or operate any of the facilities utilized in connection with the delivery and sale of this gas.

The contract for the sale of gas to Wyoming Company was entered into October of 1929 and provides for the sale by Colorado Company to Wyoming Company of the latter's requirements of natural gas. The gas so purchased by Wyoming Company is transported by it through its transmission pipe line and resold to various industrials, public authorities, and distribution companies for resale in the States of Colorado and Wyoming.

The total volume of gas sold by the Colorado Company in 1939 was approximately 41,000,000 MCF. Of this total,

about 20,000,000 MCF was sold to Natural Gas Pipeline Company of America. The two largest customers on the Denver line were Colorado Fuel and Iron Corporation (about 7,000,000 MCF annually) and Public Service Company of Colorado, Denver city gate (about 6,000,000 MCF annually).

Wyoming Company was incorporated under the laws of the State of Delaware in December of 1925 and is authorized to do business in the States of Colorado and Wyoming. The company's facilities consist of a natural gas transmission pipe line extending from a point near Littleton, Colorado, in a northerly direction and terminating at the city gate of Cheyenne, Wyoming, a distance of approximately 114 miles, as well as compressor stations and a number of laterals extending from the main line to various city gates and industrial plants in Colorado and Wyoming. At the inception of the project, natural gas was obtained from the Wellington gas field situated in Larimer County, Colorado. Until the latter part of the year 1929, its total requirements were obtained from this field. During the calendar year ending December 31, 1939, 98 per cent of its total requirements were obtained from Colorado Company.

During the year 1939, Wyoming Company transported and sold a total of 2,860,000 MCF of natural gas. Of this total about 900,000 MCF was sold to its affiliate, Public Service Company of Colorado, for resale by that Company through its distribution systems in a number of communities situated in northern Colorado. During the same year, Wyoming sold approximately 415,000 MCF to another affiliate, Cheyenne Light, Fuel and Power Company, for distribution in the City of Cheyenne. A total of 152,000 MCF¹ was sold for resale to the Greeley Gas and Fuel Company and Highway Gas Company. In addition to the above sales for resale, Wyoming Company, during the same period, sold a total of about 1,367,000 MCF¹ directly to ten industrial consumers located along its system in the State of Colorado and sold small quantities of gas to two United States Army posts.

¹At 14.4 lbs. plus 4 oz.

Jurisdiction.

Canadian River and Colorado Interstate contend that they are not "natural-gas companies" within the meaning of the Natural Gas Act. The gist of these contentions has been considered before and rejected. Essentially, the contentions are: the business is private and not affected with a public interest; the contracts were entered into privately before the passage of the Natural Gas Act; and the companies have not held themselves out to serve the public generally but engaged only in serving natural gas to a selected number of customers. In addition, Canadian River contends that so far as it is engaged in the production and gathering of natural gas, it is not subject to the jurisdiction of the Commission. Colorado-Wyoming concedes that its operations in selling gas in Wyoming which it receives at Littleton, Colorado, constitute it a "natural-gas company" under the Act, but it contends that the Commission has no jurisdiction over its transactions in Colorado.

The question of jurisdiction is one of fact and law. The facts are clear and admitted. All three companies are engaged in "the transportation of natural gas in interstate commerce" and in "the sale in interstate commerce of such gas for resale." It is clear therefore that the respondent companies are engaged in activities which make them natural-gas companies within the meaning of the Natural Gas Act.

In effect, respondents challenge the constitutionality of the Natural Gas Act on the grounds that it attempts the regulation of private business. The Commission is mindful of the fact that already in other cases, where similar contentions were made and similar circumstances existed, the courts have upheld the constitutionality of the act here involved¹.

¹Natural Gas Pipeline Company of America and Texoma Natural Gas Company v. Federal Power Commission and Illinois Commerce Commission, 120 Fed. (2d) 625 (C.C.A. 7th); Mississippi River Fuel Corporation v. Federal Power Commission, 121 Fed. (2d) 159 (C.C.A. 8th). See also Illinois Natural Gas Company v. Central Illinois Public Service Company and Illinois Commerce Commission, (No. 100—October Term, 1941) 314—U. S.—(decided January 5, 1942).

The particular contention of Canadian, that insofar as it is engaged in the production and gathering of natural gas it is not subject to the jurisdiction of the Commission, is unsound. Canadian's production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce. Furthermore, Canadian's operations are an integral part of Colorado's operations and the two comprise a single operating system. The investigation of Canadian's production and gathering property and operations is indispensable in regulating Canadian's rates and charges for the sale of natural gas in interstate commerce for resale and for the transportation of natural gas in interstate commerce.

The contention of Colorado-Wyoming is negatived by the decision in *Illinois Natural Gas Company v. Central Illinois Public Service Company and Illinois Commerce Commission*, (No. 100—October Term, 1941) 314 U. S.—, where the Supreme Court, in an extension case within the State of Illinois, said:

"In determining the scope of the federal power over the proposed extension of facilities and sale of gas it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case the proposed extension of appellant's facilities is so intimately associated with the commerce and would so affect the volume moving into the state and distribution among the states as to be within the Congressional power to regulate those matters which materially affect interstate commerce, as well as the commerce itself." (citing cases.)

Cost of Plant.

The record contains considerable evidence as to the cost and alleged value of the properties involved in the proceedings.

Canadian Company¹ and Colorado Company each intro-

¹Evidence confined to transmission facilities only.

duced estimates of reproduction cost new less observed depreciation. They also introduced evidence as to the original cost of the property. Wyoming Company offered only "actual construction costs, less observed depreciation, plus working capital and additions to plant, now and immediately in course of construction." Commission staff restricted its plant studies to original cost and offered evidence of that character.

We have considered the estimates of reproduction cost new less observed depreciation submitted by the Canadian Company and the Colorado Company but conclude that they are too conjectural to have probative value, as they are not based upon established facts, and therefore, are subject to the vagaries of theories and imagination. We, therefore, turn to the evidence of original cost of the properties involved to determine whether it provide an adequate basis for the establishment of the proper rate base.

The properties are all of comparatively recent acquisition or construction. The accounting records have been sufficiently adequate and well maintained to permit a ready determination of all costs involved. The major portion of all cost of Canadian and Colorado Companies has been incurred since the adoption by these companies of an accounting system based on the Code of Accounts of the Pennsylvania Public Service Commission. Thus, the basic facts are clear and essentially undisputed. They represent the best and only reliable evidence as to property values. We find, therefore, in accordance with the provisions of Section 6 of the Natural Gas Act, and under the record in this proceeding, no necessity exists to consider other factors than original cost of the properties in service.

The differences between the amounts representing original cost claimed by the companies and allowed herein are all essentially differences in interpretation of the accounts or conclusions as to whether certain expenditures are legitimate items to be included in the cost of plant and hence in the rate base. A statement of the amounts claimed by each company and the amounts allowed herein follows:

	Original Cost (as of December 31, 1939)		
	Canadian Company	Colorado Company	Wyoming Company
Claimed by Company	\$14,648,821	\$14,670,749	\$1,860,522 ¹
Allowed herein	10,784,464	11,879,409	1,678,878
Difference	\$ 3,864,357	\$ 2,791,340	\$ 181,674

The difference in the amounts above are large for the Canadian Company and the Colorado Company. However, they are accounted for principally by a comparatively few items, the decisions on which involve fundamental principles. These principles, which will be discussed later, relate to: (1) items formerly charged to expense (not through an accounting error) which the companies now seek to capitalize; (2) write-ups in plant accounts arising through transactions between affiliated interests; and (3) amounts paid to affiliated interests for entering into contracts. A few adjustments arise from a difference in determining the date when commercial operations first began and the balance of the items are comparatively minor adjustments and reclassifications.

A discussion of the principal items of difference between amounts claimed by the companies and those allowed herein follows:

Canadian Company

The difference of \$3,864,357 between original cost claimed by Canadian Company (\$14,648,821) and that allowed herein (\$10,784,464) is composed of the following items:

(1) Past expenses now capitalized	\$ 129,032
(2) Affiliated company profits	3,370,817
(3) Interest during construction	366,507
(4) Miscellaneous Adjustments	(1,999)
	<hr/>
	\$3,864,357

(1) Past Expenses Now Capitalized. The amount of \$129,032 represents an arbitrary adjustment for general construction cost—3½% for engineering and general and

¹This figure is book cost. Company did not introduce an original cost study.

administrative overheads, plus 1% interest—on all net property additions from 1929 to 1939. It is the amount added to the book costs of the company to arrive at its claimed original cost. Whatever costs have been incurred for these purposes heretofore have been charged to operating expenses. The amount therefore represents reaccounting (not correction of an accounting error), for the charges were made in conformity with the established accounting policy of the Company in effect at the time.¹

(2) **Affiliated Company Profits.** The total affiliated company profits of \$3,370,817 are comprised of three items. First, a profit of \$3,120,496 on the sale of property by Amarillo Oil Company to Canadian Company; second, a profit of \$121,787 on the sale of property by Master Oil and Gas Company to Canadian Company; third, a profit of \$128,534 on the sale of property by Mission Oil Company to Canadian Company through Amarillo Oil Company.

All these transactions represent payments by Canadian Company for properties acquired from affiliated interests in excess of their original cost. Amarillo Oil Company is 100% owned by Southwestern Development Company as is Canadian Company. Canadian Company paid Amarillo Oil Company \$5,000,000 for its gas leaseholds and wells in the Texas Panhandle field. The original cost of these properties to Amarillo Oil Company was \$1,879,504. In fact, the difference between these amounts, \$3,120,496, or the "write-ups," was carried on the books of Canadian Company until '939 as "appreciation."

Similarly, the transactions involving the second and third write-ups stated above were not at arm's length and prices paid for the properties exceeded the original cost to the party first devoting them to the public service by the amounts shown.

The principle involved which requires the elimination from property accounts of intercompany profits from transactions not at arm's length is so patent as to require no lengthy discussion. Any treatment which would permit the capitalization of such amounts would open the

¹Peoples Gas Light and Coke Company v. Slattery, 373 Ill. 31 PUR (NS) 193, 206, 1939, and Los Angeles Gas and Electric Corporation, PUR 1933 E. 317, 323.

door to the renewal of past practices of the utility industry when properties were traded between affiliated interests at inflated prices with the expectation that the public would foot the bill.¹

(3) Interest During Construction. The Company has recorded on its books a charge for "interest during construction" computed on the basis of a construction period extending from May 1, 1927, to October 31, 1928, and upon book costs including the amount of "write-ups" heretofore discussed.² Directing our discussion first to the construction period to be utilized for the purpose of the computation, we find that the project became available for commercial operation prior to the date fixed by Respondent. The record shows clearly that regular deliveries of natural gas to Colorado Fuel and Iron Corporation, Public Service Company of Colorado, at the Denver city gate, and others, commenced in the latter part of June 1928, and continued thereafter. Such fact has long been regarded as establishing definitely the beginning of commercial operations. We hold that the construction period ended July 1, 1928. Little discussion is required to dispose of the inclusion of "write-ups" in the book costs upon which "interest during construction" is charged. It is obviously improper to attempt to build fictitious cost upon fictitious cost. Because of these two fundamental errors the books of the Company contain excessive charges for "interest during construction" in the amount of \$366,507 and such amount is here disallowed.

(4) Miscellaneous Adjustments. The addition to plant of \$1,999 is the net effect of a series of miscellaneous plant adjustments. No one of these adjustments is large, but they all represent accounting corrections or reclassifications that are necessary and proper.

In view of all the foregoing, the Commission finds that \$10,784,464. is the original undepreciated cost of Canadian Company gas plant.

¹The Commission has steadfastly held such affiliated company profits will not be recognized. (Alabama Power Company, 1 F. P. C. R. 25, 39; Louisville Gas and Electric Company, 1 F. P. C. R. 130, 133; Northern States Power Company, 1 F. P. C. R. 329, 344.)

²Item (2) *supra*.

Colorado Company

The difference of \$2,791,340 between original cost claimed by Colorado Company (\$14,670,749) and that allowed herein (\$11,879,409) is composed of three items:

(1) Past expenses now capitalized	\$ 440,050
(2) Cost of contracts	2,352,940
(3) Miscellaneous Adjustments	(1,650)
	<hr/>
	\$2,791,340

(1) This adjustment, \$440,050, is similar to that made in connection with Canadian Company original cost and discussed hereinabove. It represents items previously charged to expense in accordance with good accounting principles. Therefore, a restatement of these items resulting in their inclusion as items of legitimate original cost cannot be allowed.

(2) The \$2,352,940, consisting of two items (\$2,000,000 and \$352,940), represents the recorded value of stock payments made to Southwestern Development Company and to Cities Service Company for entering into contracts for the purchase of gas.

In order fully to understand these two items it is necessary to go back to the agreement which provided for the construction of the "Denver Line." This was a tri-partite agreement between the Southwestern Development Company, the Standard Oil Company (N.J.) and Cities Service Company. The salient features of the agreement important to this discussion were that Cities Service Company was to secure a satisfactory franchise in the City of Denver and, if successful, the corporation to be formed by Standard

There is allowed in the rate base of Colorado Company the unamortized balance of a payment made to one Arthur K. Lee for certain contracts. The principal contract related to the sale of natural gas to the municipality of Colorado Springs, which contract was about to expire at the time of purchase. There is grave doubt as to the bona fides and propriety of the transaction whereby Colorado Company acquired the contract. The record is inconclusive as to the necessity for making such an expenditure. Of the original amount of \$236,666 the company has amortized \$118,605 as of December 31, 1939. In view of the smallness of the item and the fact it will soon be completely amortized and thereby removed from the accounts, it is deemed preferable to allow it in the rate base rather than to reopen the record for further inquiry into its dubious nature.

Oil Company (N.J.) (Colorado Company) was to sell natural gas to two subsidiaries of Cities Service—the Public Service Company of Colorado for distribution in Denver and to Pueblo Gas and Fuel Company for distribution in Pueblo, Colorado. Southwestern Development Company agreed to form a corporation (Canadian Company) for the purpose of acquiring the Amarillo Oil Company properties and to produce and transport the gas from the field to a point of connection with the transmission company (Colorado Company). Standard Oil Company (N.J.) agreed to form a corporation (Colorado Company) for the purpose of transporting the gas from point of delivery by Canadian Company to the above named and other markets. Pursuant to this agreement the Canadian Company and Colorado Company came into being. The whole enterprise contemplated by the agreement became a reality.

Very strangely, it is now represented that Canadian Company refused to negotiate an agreement for the sale of gas by it to Colorado Company unless Colorado Company turned over to it 10,000 shares of preferred stock, having a total par value of \$1,000,000, and 531,250 shares of no par common stock having a recorded value of \$1,000,000. This \$2,000,000 was recorded on the books of Colorado Company as cost of the gas purchase agreement. It is noted that the stock was actually issued to Canadian Company's nominee, the Southwestern Development Company.

The record clearly shows that the foregoing transaction resulted in an unjustified and fictitious increase of book cost of plant. In the tri-partite agreement the parent companies undertook to develop a mutually advantageous business enterprise by agreeing to create subsidiaries to carry the plan into effect. Pursuant thereto such subsidiaries were organized. It is now represented that ~~one~~ subsidiary, Canadian Company, refused to do what its parent had agreed upon unless it were paid \$2,000,000. The Commission would be remiss in its duty if it required consumers to pay a return upon and amortize this payment.

The balance of the total amount of \$2,352,940 is \$352,940. This alleged cost is a result of issuing 187,500 shares of no par common stock to Cities Service Company, and is

likewise no part of legitimate original cost. It is contended that this cost was incurred because Public Service Company of Colorado and Pueblo Gas and Fuel Company, subsidiaries of Cities Service Company, the latter a party to the tri-partite agreement, would not enter into purchase contracts without such payment being made to the parent company (Cities Service Company). The stock was issued to Cities Service Company but later, on December 29, 1931, Cities Service Company sold the stock to Public Service Company of Colorado for \$10.00 a share, or \$1,875,000.

(3) The addition to plant of \$1,650, Miscellaneous Adjustments, is the net result of a number of minor reclassifications and corrections of accounting errors required by the record.

Wyoming Company.

The difference, \$42,236, between original cost claimed by the Wyoming Company of \$1,721,414, and that allowed herein, \$1,678,878, is comprised of the following items:

(1) Interest capitalized on claimed non-utilized capacity	\$27,475
(2) Excessive interest during construction	7,574
(3) Miscellaneous Adjustments	7,187
	<hr/>
	\$42,236

(1) This amount, \$27,475, represents interest computed on a proportion of the total cost of the property south of Fort Collins, Colorado, estimated by the company to be in excess of that required to handle the business actually done during the period. This capitalization of a fictitious and arbitrary interest amount after the close of the construction period is clearly not justified. Interest ceases to be a cost of the original plant when commercial operations begin.

(2) This adjustment, \$7,574, is necessary to restate interest during construction on the basis of simple interest at 6% per year applied to the adjusted monthly construction expenditures on each job for the period from the date of the initial expenditure to the date of operation or date ready for service.

(3) This total, \$7,187, includes an adjustment of \$5,715 for excessive construction overheads capitalized and \$1,472 of miscellaneous adjustments, none of which can be treated as cost of plant.

Accrued and Annual Depletion, Depreciation and Amortization.

The determination of the annual allowances (annual expenses) for depletion, depreciation and amortization (sometimes referred to jointly as depreciation) and the accrued depreciation in the properties must be consistent. This is a simple statement of what should be regarded as a universal truth in the regulation of rates. It is so regarded by the overwhelming majority of regulatory authorities of the country, and by students and writers on the subject. It is so regarded by sound business management outside of the utility rate case field.

But, the principle of consistency is flagrantly violated in the evidence introduced by the companies in this proceeding. The accrued depreciation used by the companies is based upon observed percent condition of the property, which in a large measure is merely observed deferred maintenance. (Accrued depletion as determined by Canadian Company is an exception. It is based on estimates of original and remaining reserves.) Under the observation theory a high observed percent condition and consequently a low existing accrued depreciation result for many items of plant right down to the instant before they suffer the breakdown or obsolescence requiring retirement.

However, even this theory, if carried out consistently, might be considered as having some elements of reasonableness. The small observed depreciation would find its counterpart in an equivalently small annual charge to operating expenses to cover the yearly added amount of observed depreciation. But, this is not done. Instead another theory is advanced by the companies as a basis for determining the annual charge to operating expenses. In determining expenses the physical aspects are neglected and the problem becomes one of determining the probable length of life of the enterprise—an economic aspect. The future always may be considered speculative and manage-

ment can always be considered only reasonable if it conservatively judges the future. Thus, estimates of comparatively short life result. It then argues that the annual charges to expenses for depreciation (amortization of the investment) should be sufficient to amortize the remaining investment (cost new less observed depreciation) over the remaining short life of the enterprise. Thus, in calculating expenses, chargeable to the consumer, high depreciation charges are computed; in computing return to the company the opposite prevails, a small deduction from the cost of plant is computed.

The evidence of the Commission staff treats accrued and annual allowance for depreciation on a simple, consistent, and reasonable basis. It is the application of the service life principle. Property begins its inevitable march to retirement the moment it is placed in service. Its total life in service can be reasonably estimated with due consideration given to such influencing factors as probable life of the enterprise, gas reserves, obsolescence and inadequacy. The annual charge to expenses should be the best possible measure of the total service value of that property used up in a year. The net accumulation of these annual charges is the best possible determination of the expired outlay, hence the best measure of the actual depreciation existing in the property as of that date.

In an attempt to justify the unreasonable inconsistency in method of determining annual and accrued depreciation, the companies argue that a distinction must be made before and after passage of the Natural Gas Act. This argument is without merit for depreciation accrues regardless of any statute. The companies, of course, accrued depreciation in their books prior to the passage of the Act. The reserve requirement deducted herein is far less than that actually accrued. A comparison of the book reserves for depreciation, with that used herein, as of December 31, 1939, follows:

	Depreciation Reserve—December 31, 1939		
	Canadian Company	Colorado Company	Wyoming Company
Per Books	\$2,995,528	\$4,994,352	\$486,406
Per This Opinion	1,480,948	2,674,805	395,944

The above comparison clearly reveals that by adoption of the principles announced herein the reserve is less than the amounts now on the books of the companies. They are benefited to the extent of the differences.

Aside from the question of principles there remain two major questions which have a direct influence on both the accrued and annual depreciation. These are (1) natural gas reserves, and (2) probable length of life of the enterprise. The two questions are related and will be discussed jointly in the following section under "Gas Reserves."

Gas Reserves

Almost one-third of the 16,000 page record deals with testimony concerning the natural gas reserves in the Texas Panhandle field and the remaining recoverable gas reserves of Canadian Company. For us to attempt specifically to discuss the many complex and involved questions pertaining to the remaining recoverable gas reserves of the field as a whole or of Canadian Company would serve only unduly to extend this opinion and cause to be treated at length a matter that, from the position it occupies in this proceeding, fails to warrant such extensive treatment. We have carefully considered all of the evidence of record and believe that the question can be resolved in relatively simple fashion.

Three estimates are of record for the field as a whole. The Company Witness Thompson gave it as his opinion that as of January 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 9,532,027,596 MCF of gas at 16.4 pounds pressure base. The Company Witness Hughes gave it as his opinion that as of August 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 8,840,132,111 MCF of gas at 16.4 pounds pressure. The Commission's staff Witness Hammer gave it as his opinion that as of August 1, 1939, at an assumed abandonment pressure of 25 pounds, there could be recovered 22,420,000,000 MCF of gas at 14.65 pounds pressure. In addition, the Witness Hammer upon the same basis estimates the recoverable reserve of Canadian Company to be 3,645,000,000 MCF.

We are convinced that, without adjustment, none of the

foregoing estimates can be accepted as the amount of natural gas reasonably expected to be recovered from the Texas Panhandle field. It seems clear from the evidence that the Company's estimates are too low; the estimates of the Commission's staff too high. We reach that conclusion because estimates of the Company witnesses based on the "porosity sand thickness" method or "open flow" do not appear to have been founded on reliable or proper data. Further than that it appears that when adequate development of a field has been reached and satisfactory pressure and production data are available, such as is found to be the case in the Texas Panhandle field, the pressure decline method, when properly used, is to be desired over those methods used by the Company witnesses depending as they do solely upon matters of judgment.

The major criticisms made by Canadian Company of Commission staff estimates were: (1) the pressure decline method cannot be applied to the Texas Panhandle field, (2) the use of quadrants in applying the method was incorrect, (3) account was not taken of the migration of gas under Canadian's acreage, (4) a 25 pound abandonment pressure is too low, and (5) account was not taken of the early unmetered production in the field.

The pressure decline method is recognized as a satisfactory method of estimating gas reserves in a field that is depleted as much as 15% or more and where reliable pressure and production data are available. The Texas Panhandle field meets these qualifications. It is a well developed field and the pressure and production records maintained by the Texas Railroad Commission are adequate and satisfactory. The estimates of Canadian Company witnesses based on porosity, pay thicknesses and open flow were not founded on proper data and must be considered essentially unreliable.

The dispute concerning the accuracy of the inmathematical result following the method used by Commission staff of dividing the entire field into quadrants and averaging these quadrants is not clearly resolved on the record. The Commission recognizes, however, that for the field as a whole the Commission staff arrives at an average of 15,400 MCF of remaining reserves per acre as compared with only 11,600

MCF of remaining reserves per acre under Canadian Company acreage. If the method of averaging of quadrants is incorrect, it certainly has favored the company position of lower reserves. The record shows that Canadian acreage is considered among the very best in the entire field.

The differences of opinion as to whether Commission staff estimate allowed for the migration of gas from Canadian Company acreage occupies considerable space on the record. The pressure decline method, theoretically, automatically accounts for any migration. If the iso-baric maps are properly drawn this factor is accounted for.

The Commission has considered Canadian Company's remaining criticisms of the Commission staff estimate, abandonment pressure and unmetered production. There are many factors which will influence the pressure at which wells will be abandoned. The time of abandonment is so far in the future, however, that the answer at this time must be somewhat speculative. Similarly, any estimate of the amount of unmetered gas produced and wasted in the first years of the field must also be somewhat speculative.

After weighing all the pertinent facts of record and making due allowance for the criticisms of the estimate submitted by Commission staff, the Commission concludes that Canadian Company's remaining recoverable reserves, as of December 31, 1939, are not less than 2,800,000,000 MCF at 14.65 pounds pressure base and an abandonment pressure of approximately 50 pounds.

At the present and expected future rate of production of about 55,000,000 MCF a year, the 2,800,000,000 MCF of recoverable reserves will last 53 years. This determination, therefore, settles the last remaining question, that of the probable length of life of the enterprise. For purposes of applying the service life principle for depreciable property it is necessary to make certain that the life of the enterprise will exceed that of the longest life of any major unit of property. A life of 50 years, from 1928, or a remaining life, from December 31, 1939, of 38 years has been assigned to main line pipe. Thus, the remaining estimated 53 year life of reserves leaves an ample margin for a substantial increase in rate of production.

For purposes of depleting the cost of production plant the "production method" is used. Each MCF of gas produced carries with it a unit allowance for depletion expense. If the rate of production increases, the allowance for depletion increases proportionately. Thus, irrespective of the time within which the remaining reserves are used up, total investment in production facilities will be returned to the company in depletion expense allowances.

The Commission recognizes that an expected remaining life of 38 years for an extractive industry may be considered long. Canadian and Colorado Companies' contentions, however, that the business will be abandoned by 1956, or in 16 years from 1940, are not substantiated by any reliable evidence. The Commission takes note of the fact that the Texas Panhandle field and the adjacent Hugoton field are the largest known reservoirs of natural gas in the world. Natural-gas companies relying upon these fields, directly or indirectly, for their source of supply may be expected to continue in business for many years to come.

Parenthetically, it may be noted at this point that it makes little difference whether the service life principle based on the longer expected life, or the company's amortization principle based upon a 1956 expiration, is adopted. The net results as to excess earnings are substantially the same, provided consistency is maintained in computing the annual expense and the accrued depreciation and depletion reserve requirements. This result is a striking illustration of the fact that if consistency is followed in the treatment of accrued and annual depreciation or amortization, reasonable results may be expected, almost irrespective of the method or theory adopted.

Conclusions as to Depreciation, Depletion and Amortization.

In view of the foregoing, the Commission adopts herein the service life principle for determining annual and accrued depreciation and the production method for determining annual and accrued depletion of production facilities, using 2,800,000,000 MCF as the remaining recoverable reserves as of December 31, 1939. No serious controversy arose over the estimated service lives used by the Commis-

sion staff for the various classes of property other than main line pipe.¹ These estimates stand as reasonable, and are adopted. Using these estimates of service lives, the 2,800,000,000 MCF of remaining recoverable reserves² and the plant costs adopted as set forth hereinabove, the following amounts are obtained as proper for annual depreciation, depletion and amortization expense and accrued depreciation, depletion and amortization.

	Canadian Company	Colorado Company	Wyoming Company
As of December 31, 1939			
Accrued Depletion	\$ 653,681		
Accrued Depreciation	1,480,948	2,674,805	395,944
Accrued Amortization		118,605	
Total	\$2,134,629	\$2,793,410	\$395,944
Year 1939			
Depletion Expense	\$ 80,969		
Depreciation Expense	157,774	268,305	38,280
Amortization Expense		13,890	
Total	\$ 238,743	\$ 282,195	\$ 38,280

The amortization shown above for Colorado Company covers the cost of the contract for the sale of gas to Colorado Springs. The amount of amortization accrued and the annual allowance are both in accordance with the present practice of Colorado Company in accounting for the total cost of \$236,666.

Rate Base.

Two factors in addition to original cost and accrued depreciation must be considered before the rate base for each company can be determined. These are: (1) working capital and (2) allowance for property additions since December 31, 1939.

¹The controversy on the estimated life of main line pipe was involved in the estimates of natural gas reserves and the remaining life of the enterprise.

²For purposes of depleting gas well construction costs the reserves under the wells, rather than those under the entire acreage were used. Based on the total 2,800,000,000 MCF these reserves were determined to be 1,724,000,000 MCF as of December 31, 1939. This is in accordance with the alternative method of depletion submitted in evidence by Commission staff.

Working Capital

There is not a large difference between the working capital requirements determined by Commission staff and by the respective companies. Comparisons of these amounts are shown in the following table:

	Working Capital Requirements.		
	Canadian Company	Colorado Company	Wyoming Company
Claimed by Company	\$190,000	\$120,000	\$45,490
Commission Staff	150,738	109,065	16,235
Difference	\$ 39,262	\$ 10,935	\$29,255

The differences shown are largely due to the inclusion by the companies of an allowance for minimum bank balances. These cash balances need not be provided for separately and were not included in the Commission staff estimates. The record is clear that delayed expense items, such as income taxes, provide ample funds for this purpose. Accordingly, the amounts determined as reasonable by Commission staff are adopted herein.

Property Additions

There is evidence in the record of probable future additions to plant for all three companies. A number of these additions, estimated at the time, have since been made. Allowance for these additions appears reasonable. Accordingly, an allowance for plant additions to December 31, 1941, is made herein. The allowances for the three companies are as follows:

	Additions Allowed 12/31/39 to 12/31/41
Canadian Company	\$571,923
Colorado Company	337,000
Wyoming Company	78,813

It is contended that future additions beyond those of 1941 and as far as 1947 should be considered. At this time such probable future additions must still be considered speculative. Furthermore, in allowing the above additions without a concomitant deduction for additional depreciation and depletion reserves accumulated during the same years, the Commission is treating the companies more than fairly.

The estimated reserve accruals for two years for Colorado Company are larger than the above additions and Canadian Company's estimated reserve accruals for two years are almost as large as the above additions. For any long period of time reserve accruals will be larger than additions; hence the rate base would be lower if both items were considered. (After a natural-gas company has reached full commercial operations, the net investment—that is, cost less related reserves—tends to decrease with the lapse of time and with production.)

Contributions in Aid of Construction

Wyoming Company has on its books amounts, ~~when properly~~ classified, representing Contributions in Aid of Construction. The payments were made by customers for construction of certain facilities incident to service to such customers. The evidence is that the average balance of such account was \$12,183. The amount is no longer refundable. It represents no investment by Wyoming Company. Accordingly, the amount should be deducted from the plant costs here to be utilized as a rate base.

Going Value

The Wyoming Company contended that an amount of \$175,000 should be added to cost of plant for going value. The amount is a judgment figure wholly unrelated to any costs or outlays. This Commission and regulatory agencies in general have consistently condemned the arbitrary additions to the rate base of such fictitious element of value. It is significant that neither Canadian Company nor Colorado Company introduced any such claim.

The amount claimed by Wyoming Company for going value is deemed unjustified and is not included in the rate base.

Conclusions as to Rate Bases

There follows a summation of the rate base for each company based upon the conclusions reached herein as to each of the items involved.

	Canadian Company	Colorado Company	Wyoming Company
Original Cost as of Dec. 31, 1939	\$10,784,464	\$11,879,409	\$1,678,878
Less: Accrued Deprecia- tion, Depletion and Amortization	2,134,629	2,793,410	395,944
Depreciated Original Cost	\$ 8,649,835	\$ 9,085,999	\$1,282,934
Plus: Working Capital Additions to Dec. 31, 1941	150,738 571,923	109,065 337,000	16,235 78,813
Less: Customer Contribu- tions			(12,183)
Prudent Investment	\$ 9,372,496	\$ 9,532,064	\$1,365,799

The Commission therefore adopts the foregoing prudent investment amounts as the rate base for each company.

Revenues and Expenses.

None of the companies offered in evidence a complete income statement for any period of its operations. Fragmentary sections thereof, such as revenues, operating expenses and taxes were presented separately, in numerous exhibits. Canadian Company's operating costs were stated in accordance with the terms of its contract with Colorado Company rather than on the basis of recognized principles of expense classification. Colorado Company showed revenues and expenses separately for the Denver line and the Texoma Natural Gas Company deliveries. Wyoming Company introduced an income statement but omitted therefrom all consideration of annual depreciation expense.

The only complete income statements are to be found in Commission staff exhibits. These exhibits contained a complete analysis covering each of the years, 1937, 1938 and 1939. Brief summary statements were also introduced for the twelve months ended September 30, 1940. A comparative analysis of these statements reveals little difference in the net operating results for 1939 compared with either

the three year average or the 12 months ended September 30, 1940.

The Commission is aware of the substantial increase in natural gas sales due to the country's war efforts. It also takes note of the increasing costs of operation. In the natural-gas industry, however, operating labor and materials are a comparatively small part of total costs. All factors considered, it may reasonably be expected that revenues will increase as rapidly, if not more rapidly, than costs for all three companies. Nevertheless, for purposes of this order, 1939 revenues and costs are considered to be representative of the relationship that will exist between these items in the immediate future. Prediction of future conditions, particularly under present emergency conditions, is beset with more than average difficulty. Use of 1939 figures, however, undoubtedly resolves most of the doubts as to future operation conditions in favor of the companies.

Operating revenues as reported by the companies and the staff are essentially in agreement. The staff adjusted revenues so as to state all deliveries and revenues on a calendar year basis. These adjustments are minor and are accepted as reasonable. The 1939 operating revenues adopted herein for each of the three companies follows:

	Operating Revenues 1939
Canadian Company	\$2,393,387
Colorado Company	5,773,010
Wyoming Company	828,941

Depreciation and tax expenses will be considered along with operating expenses in the following discussion. The most important single item of expense concerning which a wide difference exists between Commission staff and each of the companies is the annual allowance for depreciation expense. This has been discussed fully hereinbefore and appropriate allowances determined.

Commission staff recommended a number of adjustments to operating expenses and taxes as found recorded on the books of the companies. In some cases they did not adjust the items but suspended them for subsequent Commission decision. A brief discussion of the adjustments and sus-

pensions found reasonable and adopted herein follows for each company.

Canadian Company

To the extent that any comparison is possible, there is only a small difference between operating expenses as shown in Canadian Company exhibits and as shown in Commission staff exhibits. But, as stated previously because of the fragmentary nature of Canadian Company's exhibits, it is necessary to deal with the Commission staff figures exclusively.

For 1939 Commission staff reported operating expenses, as adjusted, of \$665,287 and before adjustments of \$746,556. Almost the entire adjustments are concerned with residual operations expenses. With the exception of the adjustment of \$11,722 in connection with the joint operations of the Texoma Natural Gas Company's Fritch gasoline plant and an item of \$223 of non-recurring expense, the balance of the staff expense adjustments are found reasonable. Unless the balance of the adjustments are made, operating expenses are overstated by the amount thereof. As a result of the above changes to the staff adjusted amount of \$665,287, operating expenses for 1939 are found to be \$677,232.

A further deduction of \$6,614 for delay rental expense is found necessary. This amount was included in expenses by Commission staff since an adjustment to the plant account was made of \$151,591 for past delay rentals capitalized. This plant adjustment was not adopted herein and it is, therefore, necessary to deduct the amount of \$6,614 from 1939 expenses. After deducting this amount, a balance of \$670,618 is obtained for operating expenses.

To this amount for operating expenses of \$670,618, two items must be added. First, exploration and development costs of \$41,573 for 1939. Second, an allowance for rate case expense. Actual rate case expense for 1939 was suspended by Commission staff for Commission consideration. It is customary to amortize such expenses over a period of 5 years, or more. Canadian Company in its exhibits claimed \$41,000 a year for 5 years as necessary to cover its

total costs. A close scrutiny of some of the rate case expenses might show certain expenditures as unreasonable charges against rate payers. For purposes of this order, however, the Commission adopts the full annual amount claimed by the company as well as the five year amortization period.

The addition of the above two items results in an amount of \$753,191 as the 1939 operating expenses of Canadian Company, which amount is considered as reasonable.

The total taxes of Canadian Company for 1939, including Federal income taxes, were \$177,162. Commission staff deducted an amount of \$2,021 of Federal capital stock tax and suspended all Federal income tax of \$66,403 for further consideration. The Commission staff deduction is not adopted and the suspension is also reinstated.

Commission staff suspended all Federal income taxes. This was done to call attention to the fact that a tax adjustment would be necessary if the Commission changed rates; and, therefore, profits. The reduction in charges and consequent reduction in taxable income ordered hereinafter would result in a substantial decrease in income taxes at the 1939 rates. However, tax rates have increased over those of the past. Accordingly, the full amount of the 1939 income taxes of \$66,403 are allowed herein and these together with increase in business are considered as fair estimates of the future as can now be made.

A summary of the operating revenues found proper and reasonable herein follows:

Revenues for 1939
of Canadian Company

Operation expense	\$ 753,191
Depreciation expense	157,774
Depletion expense	80,969
Taxes	177,162
Total Revenue Deductions	\$1,169,096

The deduction of this amount from the 1939 revenue of \$2,393,387 leaves a balance of \$1,224,291 as the 1939 income available for return.

Colorado Company

Again, for reasons hereinbefore set forth, it is necessary to deal exclusively with expenses as shown by Commission staff exhibits. Operating expenses, as adjusted, for 1939 were reported as \$425,019, and before any adjustments, (but after reclassifications to conform to the system of accounts), \$432,643. These expenses are exclusive of the cost of purchased gas for 1939 of \$2,112,951.

Commission staff adjustments to operating expenses consist chiefly of a deduction of \$7,360 from transmission line maintenance. The evidence on record tends to support this deduction. However, for purposes of this order the operating expense of \$432,643, as shown by the Colorado Company on its books (reclassified) is adopted.

Adding to this operating expense of \$432,643, an allowance for amortizing expenses in connection with these proceedings is considered reasonable. During 1939 Colorado Company reported expenses of \$58,290 in connection with the rate case. These expenses were suspended by Commission staff for further consideration. In its evidence Colorado Company claimed an annual allowance of \$43,000 for a five-year period to cover its total estimated expenses attributable to the rate case. This amount is accepted herein as the best estimate on record as to a proper allowance for rate case expense. The addition of this allowance to operating expenses of \$432,643 results in a total allowance of \$475,643.

Total taxes, including Federal and State income taxes, for 1939 were \$637,641. Commission staff deducted an amount of \$22,693 representing a portion of Federal capital stock tax as not properly includible in gas expense. Because of the general tax situation, the Commission allows this portion of capital stock tax as a proper charge.

Federal and State income taxes for 1939, included in the total taxes of \$637,641, are \$419,040. These income taxes were suspended by Commission staff for further consideration. For reasons given in discussing a similar item of expense of the Canadian Company, the item is allowed in full.

There is no controversy as to the 1939 actual cost of purchased gas for resale of \$2,112,951.¹ This is the largest and predominating item of operating costs. The reasonableness of this charge made by Canadian Company is, of course, involved in this case. Any adjustment in Canadian Company rates and charges by order will result in an adjustment of this cost item.

A summary of the revenue reductions found proper and reasonable for the Colorado Company follows:

Operating expenses	\$ 475,643
Cost of purchased gas	2,112,951
Depreciation expense	268,305
Amortization expense	13,890
Taxes	637,641
Total Revenue Deductions	\$3,508,430

The deduction of this amount from the 1939 revenue of \$5,773,010 leaves a balance of \$2,264,580 as the 1939 income available for return.

Wyoming Company

Essentially the only difference between company and Commission staff statement of operating expenses is in the staff suspension of all rate case expense. During 1939, a total of \$14,282 was reported as rate case expense. Wyoming Company's estimate of rate case expense, for 1939, 1940 and 1941 totaled approximately \$87,660. On the basis of amortizing this expense over a five-year period, an annual allowance of \$17,500 is made.

Commission staff recommended deductions from operating expenses for 1939 of \$2,579 are accepted. Included in this total is \$1,657 representing expenditures for entertainment and donations not properly includible in operating expenses. The balance, \$922, represents a series of minor adjustments.

Allowing the \$17,500 for rate case expense and accept-

¹Total gas purchased was \$2,126,330. The difference, or \$13,379, represents gas used in company operations and is included in operating expenses.

ing the miscellaneous adjustments of \$2,579 results in total operating expenses for 1939 of \$85,364. This amount is exclusive of the cost of purchased gas.

The 1939 cost of purchased gas, after adjustment to a calendar year basis, was \$498,103. During the year the rate for purchased gas from Colorado Company increased from 20 cents per MCF to 22-1/2 cents per MCF. The difference between the amount paid in 1939 and the cost for the full year 1939 on the 22-1/2 cent rate is \$23,120. Operating expenses have not been increased by this amount and need not be increased since the reasonableness of this 22-1/2 cent rate of Colorado Company as well as its other rates for resale gas are under consideration in this proceeding. In the allocation of costs, discussed in the following section, appropriate consideration is given to this inter-relationship of revenues of the selling company and costs of the purchasing company.

As in the case of taxes for Canadian Company and Colorado Company, and for the same reasons set forth in the discussion thereof, Wyoming Company's actual taxes for the year 1939 are adopted herein. For 1939 the total taxes, including income taxes, were \$57,106.

A summary of the operating revenue deductions for 1939 found proper and reasonable herein for Wyoming Company follows:

Operating expense	\$ 85,364
Cost of gas purchased	498,103
Depreciation expense	38,280
Taxes	57,106
Total Revenue Deductions	\$678,853

The deduction of this amount from the 1939 revenue of \$828,941 leaves a balance of \$150,088 as the 1939 income available for return.

Conclusions as to Income Available for Return.

For convenience, there follows a tabulation of the operating revenue, operating revenue deductions and resulting income available for return for the year 1939 for all three companies:

	Canadian Company	Colorado Company	Wyoming Company
Operating Revenue	\$2,393,387	\$5,773,010	\$828,941
Operating Revenue Deductions			
Operating expenses	\$ 753,191	\$ 475,643	\$ 85,364
Cost of gas purchased		2,112,951	498,103
Depletion	80,969		
Depreciation	157,774	268,305	38,280
Amortization		13,890	
Taxes	177,162	637,641	57,106
Total Deductions	\$1,169,096	\$3,508,430	\$678,853
Income Available for return	\$1,224,291	\$2,264,580	\$150,088

Rate of Return.

There is no exact or fixed formula for determining a reasonable rate of return. In the final analysis the rate of return fixed must be the Commission's best judgment of what is fair, based on the evidences of record and guided by the basic facts required by law to be considered. These basic facts are best set forth in the opinion of the United States Supreme Court in *Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia*, 262 U. S. 679. The requirements stated that consideration be given to the returns earned by like investments which are attended by corresponding risks and uncertainty in the same vicinity and over the same period of time are well known.

The record contains a great amount of testimony on rate of return. Four witnesses for the companies and one witness for Commission staff offered exhibits. Opinion of company witnesses indicates a fair rate of return to be not less than 8%. Evidence of Commission staff witness indicates a fair rate of return as not more than 6-1/2%.

Commission staff exhibits contained complete and comprehensive studies of the history and trend of interest rates, stock yields, stability of earnings of public utilities and

other enterprises, general economic conditions and local conditions in the area of the market served. In addition, general statistics of the natural gas industry and present facts concerning the ownership, issuance, prices and yields of securities of natural gas pipe line companies, were introduced. Company witnesses relied primarily upon judgment or a far more limited study of financial experience of utilities, natural gas companies and other enterprises, both in the past and for the present. Nevertheless, the exhibits of practically all witnesses show that over-all returns are lower than before and that the returns being demanded by investors are among the lowest that have ever existed.

Canadian Company has a long-term, and essentially cost of service contract, with its affiliate, Colorado Company. Colorado and Wyoming Companies' sales are also principally to subsidiaries or affiliates and to stable markets. Colorado Company's principal industrial sale to Colorado Fuel and Iron Corporation is made to an affiliate. All these facts materially reduce basic business risks that might be present under other circumstances.

Parenthetically, one important difference exists between the circumstances in this case and in the Natural Gas Pipeline Company case. Due to the very large sales made to Colorado Fuel and Iron Corporation the proportion of Colorado's total industrial sales to its city gate sales for resale is very much larger than for Natural Gas Pipeline Company. Rates to such industrials are not subject to the jurisdiction of this Commission and are limited in a large measure by costs of competitive fuels, such as coal and oil. As it will be shown subsequently, a portion of the total earnings in excess of a fair rate of return for Colorado Company are properly allocable to these main line customers but no reduction in these rates is ordered. The amount of these earnings in excess of 6-1/2% rate of return is approximately \$131,000. If Colorado Company retains these earnings in excess of a 6-1/2% rate of return on its sales to these customers, its rate of return on its entire business is increased to approximately 8% after placing into effect the reductions in rates ordered herein.

Evidence of record shows that the natural gas industry

is now recognized as a major utility industry which has passed its experimental and development period. It is now seasoned. Its securities are attractive to, and held in large amounts by institutional investors and recent financing has been at low interest rates. The Commission takes note of the fact that in 1940 Colorado Company refinanced its outstanding bonded indebtedness at an interest rate of $2\frac{3}{4}\%$.

After consideration of all the testimony of record relating to the fixing of a fair rate of return, the Commission concludes that $6\frac{1}{2}\%$, on the bases herein found to be reasonable, is the maximum rate of return that can be considered fair in this case for all three companies.

The Supreme Court in its decision of March 16, 1942, in the case of Natural Gas Pipeline Company of America, et al v. Federal Power Commission, fully supports this view.

Conclusions as to Amount of Excessive Returns.

Application of this rate of return to the respective rate bases of each company as determined herein results in the amount of return considered as reasonable for each company. The following summary tabulation shows the rate base, income available for return, reasonable return ($6\frac{1}{2}\%$ on rate base) and excessive return for all three companies.

	Canadian Company	Colorado Company	Wyoming Company
1. Rate base	\$9,375,000	\$9,535,000	\$1,366,000
2. Income available for return	1,224,291	2,264,580	150,088
3. $6\frac{1}{2}\%$ on rate base	609,375	619,775	88,790
4. Excessive returns (2 minus 3)	614,916	1,644,805	61,298

In its discussion of "Fair Rate of Return" in that case, the Court states:

"The Commission found that $6\frac{1}{2}$ per cent is a fair annual rate of return upon the rate base allowed, which it had characterized as a generous allowance.' The courts are required to accept the Commission's findings if they are supported by substantial evidence. §19(b). We cannot say on this record that the Commission was bound to allow a higher rate. * * *

"The business is in the same position as other similar businesses with respect to increased taxation, inflation and costs of operation. Other factors such as credit risks, risks of technological changes, varying demands for product, relatively small labor requirements, and conversion of inventory into cash compare more favorably. After a full consideration of all of these factors and of expert testimony, the Commission concluded that the prescribed reduction in revenues was just and reasonable, and that the $6\frac{1}{2}\%$ was a fair rate of return."

Allocation of Costs.

It is readily apparent that the foregoing determination of earnings in excess of a reasonable return, by Companies, is based upon all the components of a rate case, in effect at the time, specifically applicable to each of the Companies as separate operating entities. This has been necessary because there are present in the proceeding three separate and distinct rate cases.

However, to stop there is to ignore realities. The entire project, although involving facilities of three corporate entities, is, for all practical purposes, a single project now designed to produce, gather, transmit and sell natural gas from the Texas Panhandle field to consumers along the line as far north as Cheyenne, Wyoming. The operation of the project is such that it is impossible, for example, to alter the rates of Canadian Company without simultaneously affecting the reasonableness of the rates of Colorado Company. Likewise the rates of Colorado Company cannot be altered without affecting the rates of the Wyoming Company.

Accordingly, if the rate-payer is to receive all to which he is justly entitled, we are compelled to determine Colorado Company's proportionate share of the reduction ordered for Canadian Company in the sum of \$614,916 and to cause that amount plus the excess earnings of Colorado Company in the sum of \$1,644,805 to be passed on to its customers. In turn the rates of Wyoming Company must be revised downward to reflect the saving in gas purchased as a result of the foregoing plus its previously determined excess earnings in the amount of \$61,298. The orders that we adopt will be designed to accomplish that result.

The Commission is aware that in an investigation such as this it is incumbent on it to determine the reasonableness or unreasonableness of the rates and charges subject to its jurisdiction. This requires that the total costs of operations, including depreciation, taxes and a fair return, be distributed among the various customers served, individually or by appropriate groups. To the extent that such costs allocated to sales under the Commission's jurisdiction are less than revenues received, the rates and charges made are

unjust and unreasonable, and revenues must be reduced accordingly.

It does not follow, from this obligation of the Commission, that an allocation of physical property or portions thereon, must be made, before any excessive returns are determined, as seems to be the contention of the companies. In fact, the fragmentary presentation by the companies of revenues and expenses particularly, is rooted in the attempt to make property allocations first and as a starting point for all subsequent exhibits and testimony. Nowhere in the entire evidence submitted by Canadian and Colorado Companies is there a complete presentation of the entire operations of the company broken down between jurisdictional and non-jurisdictional operations.

All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return. The latter method is by far the most practical and business-like.

Canadian and Colorado companies submitted a number of so-called allocation studies. Each is premised on a different theory or principle, and starts with the Denver line as distinct from other operations. These theories varied from assuming a field price for gas as the prevailing market price, to the construction and operation of a separate line for city gate resale deliveries only. For the most part the assumptions made either do not square with realities or are patently unreasonable as applied to properties and operating conditions such as those concerned.

Commission staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted. Therein costs are divided essentially into two groups, fixed and variable. Fixed costs are largely joint costs which do not vary with volume of sales. The total amount of such costs are largely proportional to the maximum demand on the system or system capacity. Accordingly, these costs have been allocated basically in proportion to each customer's responsibility for the peak day demand. Variable costs are largely those that vary proportional to output or volume of

sale. Accordingly, these costs have been allocated in proportion to volume of gas purchased by each customer.

The principles and methods of cost allocation presented by Commission staff are obviously the most appropriate and reasonable for Canadian and Colorado Companies. Applying the physical and operating data submitted in evidence by Commission staff to total costs for each company results in the allocations shown in the following table. The total cost of service for Colorado Company is the amount found reasonable herein except for purchased gas. The actual cost of gas purchased from Canadian Company of \$2,126,000 is eliminated and there is substituted the proper allocated cost of \$1,575,000. This is a reduction of \$551,000. This amount added to the excess returns of \$1,645,000, based on the present cost of gas, makes a total of \$2,196,000 as the new excess earnings over 6½% rate of return.

Canadian Company.

Customers	Revenue	Allocated Costs	Excess Revenue Over Costs
Colorado Company	\$2,126,000	\$1,575,000	\$ 551,000
Clayton Gas Company	25,000	15,000	10,000
Amarillo Oil Company	205,000	152,000	53,000
Company Use	29,000	28,000	1,000
Total	\$2,385,000	\$1,770,000	\$ 615,000
Miscellaneous Operating Revenues	8,000	8,000	-----
Total	\$2,393,000	\$1,778,000	\$ 615,000

Colorado Company.

Customers	Revenue	Allocated Costs	Excess Revenue Over Costs
Direct Industrial Sales	\$1,277,000	\$1,162,000	\$ 115,000
Sales to Public Authorities	49,000	33,000	16,000
Sales to Other Gas Utilities	3,062,000	1,652,000	1,410,000
Natural Gas Pipeline Company	1,376,000	721,000	655,000
Total	\$5,764,000	\$3,568,000	\$2,196,000
Miscellaneous Operating Revenues	9,000	9,000	.....
Total	\$5,773,000	\$3,577,000	\$2,196,000

Canadian Company sales to Colorado Company and to Clayton Gas Company are made under rate schedules on file with the Commission, FPC Rate Schedules Nos. 1 and 2, respectively, and are under its jurisdiction. As indicated above, revenues from these sales exceed the costs by \$561,000. Accordingly, the Commission finds the Canadian Company's rates and charges under its FPC Rate Schedules Nos. 1 and 2 unjust and unreasonable and by order hereinafter entered requires the company to reduce its rates and charges by that amount.

All Colorado Company sales classified as "Sales to Other Gas Utilities" and its sales to Natural Gas Pipeline Company are made under rate schedules on file with the Commission, and are under its jurisdiction. As indicated above, total revenues from these sales exceed costs by \$2,065,000. A distribution of this total between resale customers and to Natural Gas Pipeline Company is shown in the attached Exhibit A. Accordingly, the Commission finds the Colorado Company's rates and charges under its Rate Schedules Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 unjust and unreasonable and by order hereinafter entered requires the company to reduce these rates and charges by the amount of \$2,065,000 annually.

Colorado-Wyoming Gas Company.

In preparing its allocation of costs for Wyoming Company, Commission staff departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers. This method is commonly used, but under the particular circumstances surrounding the deliveries of gas to the industrial customers involved, a variation from that method as hereinafter set forth would be in keeping with the Company's operations. The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident demands of all customers on the system peak day are used, and with exception of deliveries to Highway Gas Company.

Deliveries to Highway Gas Company are for all practical purposes an exchange of gas with Goodstein Pipeline Company. The total amount of revenue involved is less than \$700 per year. In view of these facts no attempt was made to make a special cost study and costs have been assumed to equal revenues.

The total costs of Wyoming Company to be allocated are those found reasonable herein with the exception of the cost of purchased gas. As shown in Exhibit A attached, the charges made by Colorado Company to Wyoming Company exceed costs by \$98,000. A reduction of this amount ordered herein reduces Wyoming Company's total costs (including return) from \$768,000 to \$670,000 and increases the amount of excess returns as shown in the previous section on "Rate of Return" from \$61,000 to \$159,000.

A summary of the results of this allocation of costs follows:

Customers	Revenue	Allocated Costs	Excess Revenue Over Costs
Direct Industrial Sales	\$ 236,000	\$ 201,000	\$ 35,000
Sales to Public Authorities	11,000	6,000	5,000
Sales to Other Gas Utilities	582,000	463,000	119,000
	<hr/> \$ 829,000	<hr/> \$ 670,000	<hr/> \$ 159,000

All Wyoming Company "Sales to Other Gas Utilities" are made under rate schedules on file with this Commission and are under its jurisdiction. As indicated above a total revenue from these sales exceed costs by \$119,000. The balance of the excess revenues (allocated to other customers) is \$40,000 which is not passed on in rate reductions will increase the overall rate of return earned by Wyoming Company from 6½% to approximately 9½%.

The amount of the reduction in charges determined above are materially dependent upon the reduction in charges of Colorado Company to Wyoming Company. The Commission order entered herein grants Wyoming Company 30 days from and after the effective date of the new rates required to be filed by Colorado Company for the filing of its own ordered reduced rates.

The Commission finds Wyoming Company's rates and charges under its FPC Rate Schedule Nos. 1, 2, 3, 4, and 5 unjust and unreasonable and, by order hereinafter entered, requires the company to reduce these rates and charges by the amount of \$119,000 annually.

Appropriate orders will be entered in conformity with this opinion.

LELAND OLDS, Chairman
 CLAUDE L. DRAPER, Commissioner
 BASIL MANLY, Commissioner
 JOHN W. SCOTT, Commissioner
 CLYDE L. SEAVEY, Commissioner

Dated at Washington, D. C., this 18th day of March, 1942.

Leon M. Fuquay, Secretary.

Exhibit A, Docket G-124, Opinion No. 73

Colorado Interstate Gas Company

Allocated Cost of Service

Sales to Other Gas Utilities and Pipe Line Companies 1939

Name of Customer	F.P.C. Rate Schedule No.	MCF at 14.65 Pounds	Revenue	Allocated Cost	Excess Revenue Over Cost	Average Revenue ¢/MCF	Average Cost ¢/MCF
Sales to Other Gas Utilities.							
The Arkansas Valley Natural Gas Company	7	15,564	\$ 3,000	\$ 3,000	\$ —	19.3	19.3
Citizens Utilities Company	4, 6, 9	181,017	68,000	44,000	24,000	37.6	24.3
City of Colorado Springs	5	805,981	213,000	107,000	106,000	26.4	13.3
Colorado-Wyoming Gas Company	3	2,867,649	495,000	397,000	98,000	17.3	13.8
The Pueblo Gas and Fuel Company	2	452,992	158,000	74,000	84,000	34.9	16.3
Public Service Company of Colorado	1	6,650,953	2,125,000	1,027,000	1,098,000	32.0	15.4
Total Other Gas Utilities		10,974,156	\$3,062,000	\$1,652,000	\$1,410,000	27.9	15.1
Natural Gas Pipeline Company of America	8	20,367,632	1,376,000	721,000	655,000	6.8	3.5
Total		31,341,788	\$4,438,000	\$2,373,000	\$2,065,000	—	—

Exhibit B, Docket G-124, Opinion No. 73

Colorado-Wyoming Gas Company

Allocated Cost of Service

Sales to Other Gas Utilities 1939

Name of Customer	F.P.C. Rate Schedule No.	MCF at 14.65 Pounds	Revenue	Allocated Cost of Service	Excess Revenue Over Cost	Average Revenue ¢/MCF	Average Cost ¢/MCF
Cheyenne Light, Fuel and Power Co.	1, 2	414,807	\$ 182,000	\$ 124,000	\$ 58,000	43.9	29.9
Public Service Company of Colorado	3	900,114	335,000	294,000	41,000	37.2	32.7
Greeley Gas and Fuel Co.	4	147,406	64,000	44,000	20,000	43.4	29.8
Highway Gas Company	5	4,649	700	700	—	15.1	15.1
Total		<u>1,466,976</u>	<u>\$ 581,700</u>	<u>\$ 462,700</u>	<u>\$ 119,000</u>	<u>39.7</u>	<u>31.5</u>

Order Reducing Rates Canadian River Gas Company.

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs and petition filed, and the Commission having on this date issued Opinion No. 73, which is hereby incorporated and made a part hereof:

The Commission finds that:

(1) The Canadian River Gas Company (hereinafter referred to as Canadian Company), a Delaware corporation, owns and operates facilities for the production, gathering, transportation and sale of natural gas for resale in interstate commerce, and is a "natural-gas company" within the meaning of the Natural Gas Act. It produces gas from its leaseholds in the Panhandle field in the State of Texas, gathers such gas in the field and, (a) transports a portion of it through its main 22" line a distance of approximately 86 miles to a point in New Mexico known as Clayton Junction where the gas so transported is sold for resale to Colorado Interstate Gas Company and Clayton Gas Company, and (b) transports a portion of it through the facilities of Texoma Natural Gas Company to a point in Oklahoma known as Gray Junction where the gas so transported is also sold for resale to Colorado Interstate Gas Company:

(2) A substantial portion of the natural gas sold to Colorado Interstate Gas Company (hereinafter referred to as Colorado Company) at Clayton Junction is transported by Colorado Company 254 miles to the environs of Denver, Colorado, for sale to Public Service Company of Colorado and the Colorado-Wyoming Gas Company; the entire system from the Panhandle field to Denver, Colorado, is operated as a single property and is commonly referred to as the "Denver Line." A substantial portion of the natural gas delivered at Gray Junction in Oklahoma is further transported through the facilities of Natural Gas Pipeline Company of America and Chicago District Pipeline Company to Chicago, Illinois:

(3) Natural gas sales to Colorado Company and to Clayton Gas Company are sales for resale in interstate commerce and are made under rate schedules on file with this Commission and designated as Canadian River Gas

Company FPC Rate Schedules Nos. 1 and 2, respectively. The rates and charges, demanded, observed, charged, and collected by Canadian Company for the transportation and sale of natural gas for resale under its FPC Rate Schedules Nos. 1 and 2, together with all rules, regulations, practices, and contracts, affecting such rates and charges, are subject to the jurisdiction of this Commission;

(4) The original undepreciated cost of Canadian Company's gas plant as of December 31, 1939, is \$10,784,464;

(5) The remaining recoverable gas reserves of Canadian Company, as of December 31, 1939, are not less than 2,800,000,000 MCF at 14.65 pounds per square inch absolute pressure and an abandonment pressure of approximately 50 pounds per square inch; at the present and expected future rate of production these reserves will last in excess of 50 years;

(6) The production method is the most suited, for purposes of these proceedings, for determining annual and accrued (existing) depletion of gas leaseholds and gas well intangible costs; using the above determined recoverable gas reserves and the production method, an annual depletion expense of \$80,969 and an accrued depletion, as of December 31, 1939, of \$653,681 are determined as reasonable and proper;

(7) The service life principle is proper, for purposes of these proceedings, for determining annual and accrued (existing) depreciation of transmission facilities and all property other than gas leaseholds and gas well intangible costs; using this principle an annual depreciation expense of \$157,774 and an accrued depreciation, as of December 31, 1939, of \$1,480,948, are determined as reasonable and proper;

(8) The amount of \$8,649,835, (original cost of \$10,784,464 less accrued depletion of \$653,681 and accrued depreciation of \$1,480,948), is the depreciated original cost of Canadian Company's gas plant as of December 31, 1939;

(9) An allowance of \$571,923 for additions to property from December 31, 1939, to December 31, 1941, and of \$150,738 for working capital are sufficient and reasonable; these

allowances added to the depreciated original cost result in an amount of \$9,372,496 (accepted as \$9,375,000) as the proper prudent investment rate base upon which Canadian Company is entitled to earn a fair rate of return;

(10) An annual rate of return of $6\frac{1}{2}$ percent on the rate base of \$9,375,000, or \$609,375 is a fair and reasonable return to Canadian Company;

(11) Reasonable and proper allowances for operating expenses, including an allowance for amortizing rate case expense over a five-year period, depletion, depreciation, and all taxes are as follows:

Operating expenses	\$ 753,191
Depletion expense	80,969
Depreciation expense	157,774
Taxes	177,162
	<hr/>
	\$1,169,096

(12) The total allowable cost of all services of Canadian Company is \$1,169,096 plus \$609,375 for a fair return or \$1,778,471; a proper allocation of this total cost and its relationship to revenues for 1939 for sales to Colorado Company, Clayton Gas Company, and all others follows:

Customer	Revenue	Allocated Costs	Excess Revenue Over Costs
Colorado Company	\$2,126,000	\$1,575,000	\$551,000
Clayton Gas Company	25,000	15,000	10,000
All other Sales	242,000	188,000	54,000
Total	<hr/> \$2,393,000	<hr/> \$1,778,000	<hr/> \$615,000

(13) Therefore, the rates and charges made, demanded, and received by Canadian Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to Colorado Company and Clayton Gas Company are unjust, unreasonable, and excessive to the extent of \$561,000 per year;

(14) The rates and charges made, demanded, and received by Canadian Company, after reflecting the reductions hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The petition of Canadian River Gas Company to reopen these proceedings for the purpose of taking further evidence be and the same is denied;

(B) The rates and charges made, demanded, or received by Canadian River Gas Company for the transportation and sale of natural gas for resale to Colorado Interstate Gas Company under its FPC Rate Schedule No. 1 shall be reduced by not less than \$551,000 per year;

(C) The rates and charges made, demanded, or received by Canadian River Gas Company for the transportation and sale of natural gas for resale to Clayton Gas Company under its FPC Rate Schedule No. 2 shall be reduced by not less than \$10,000 per year;

(D) Canadian River Gas Company shall file on or before April 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraphs (B) and (C) above, which new schedule of rates and charges shall be effective as to all bills regularly rendered on and after May 15, 1942;

(E) The Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(F) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (D) above, Canadian River Gas Company shall cease and desist from making, demanding, or receiving any rates and charges which do not reflect the reductions ordered in paragraphs (B) and (C) above.

By the Commission:

LEON M. FUQUAY, Secretary.

Order Reducing Rates Colorado Interstate Gas Company.

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs and petition filed, and the Commission having on this date

issued Opinion No. 73, which is hereby incorporated by reference and made a part hereof:

The Commission finds that:

(1) Colorado Interstate Gas Company (hereinafter referred to as Colorado Company), a Delaware corporation, owns and operates facilities for the transportation and sale of natural gas for resale in interstate commerce, and is a "natural-gas company" within the meaning of the Natural Gas Act. It transports gas from Clayton Junction, New Mexico; at the terminus of the transmission pipe line of Canadian River Gas Company, (hereinafter referred to as Canadian Company), through its main line consisting of 20" and 22" steel pipe, a distance of 254 miles through New Mexico into the State of Colorado to the outskirts of the City of Denver, Colorado. Sales are made along the line to gas utilities and industrial customers and to Public Service Company of Colorado and Colorado-Wyoming Gas Company at the terminus of the line. Sales are made to the Natural Gas Pipeline Company of America at Gray Junction, Oklahoma, at the point of receipt of the natural gas from Canadian Company;

(2) The entire natural gas requirements of Colorado Company are obtained from its affiliate, Canadian Company; the systems of the two companies are operated as a single property;

(3) Natural gas sales to The Arkansas Valley Natural Gas Company, Citizens Utilities Company, City of Colorado Springs, Colorado-Wyoming Gas Company, The Pueblo Gas and Fuel Company, Public Service Company of Colorado, and Natural Gas Pipeline Company of America are made under rate schedules on file with this Commission and designated as Colorado Interstate Gas Company FPC Rate Schedules Nos. 1 to 9, inclusive. The rates and charges demanded, observed, charged, and collected by Colorado Company for the transportation and sale of natural gas for resale under FPC Rate Schedules Nos. 1 to 9, inclusive, together with all rules, regulations, practices, and contracts affecting such rates and charges, are subject to the jurisdiction of this Commission;

(4) The original undepreciated cost of Colorado Company's gas plant as of December 31, 1939, is \$11,879,409;

(5) The amount of \$2,874,805 for accrued depreciation in the property of the Colorado Company as of December 31, 1939, is the best possible estimate of the actual depreciation as of that date and is reasonable. The amount of \$118,605, being Colorado Company's accrued amortization as of December 31, 1939, for the cost of the Colorado Springs gas sales contract, is reasonable;

(6) The amount of \$9,085,999, (original cost of \$11,879,409 less accrued depreciation of \$2,674,805 and accrued amortization of \$118,605), is the depreciated original cost of Colorado Company's gas plant as of December 31, 1939;

(7) An allowance of \$337,000 for additions to property from December 31, 1939, to December 31, 1941, and of \$109,065 for working capital are sufficient and reasonable; these allowances added to the depreciated original cost result in an amount of \$9,532,064 (accepted as \$9,535,000), as the proper prudent investment rate base upon which Colorado Company is entitled to earn a fair rate of return:

(8) An annual rate of return of $6\frac{1}{2}$ percent on the rate base of \$9,535,000, or \$619,775 is a fair and reasonable return to Colorado Company.

(9) Reasonable and proper allowance for operating expenses, including an allowance for amortizing rate expenses over a five-year period, cost of purchased gas, depreciation, amortization and all taxes are as follows:

Operating expenses	\$ 475,643
Cost of purchased gas	2,112,951
Depreciation expense	268,305
Amortization expense	13,890
Taxes	637,641
Total	<u>\$3,508,430</u>

(10) By order entered in these proceedings, as of this date, against Canadian Company, the above cost of purchased gas has been reduced by \$551,000 annually, thereby reducing the total in paragraph (9) above to \$2,957,430;

(11) The total cost of all services of Colorado Company is the sum of the costs in paragraph (10) above of \$2,957,430 and \$619,775 for a fair return, or \$3,577,205; of this total \$2,373,000 is properly and reasonably allocated to sales made under FPC Rate Schedules Nos. 1 to 9, inclusive;

(12) The total revenues for 1939 under Rate Schedules Nos. 1 to 9, inclusive, of \$4,438,000 exceed the allocated costs found reasonable herein by \$2,065,000; the detail of this relationship of revenues to costs and the amount of excess for each purchaser is shown in Exhibit A attached to Opinion No. 73 and is made a part of this order by reference;

(13) Therefore, the rates and charges made, demanded, and received by Colorado Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to the gas utilities listed in paragraph (3) above are unjust, unreasonable and excessive to the extent of \$2,065,000 per year;

(14) The rates and charges made, demanded, and received by Colorado Company, after reflecting the reduction hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The petition of Colorado Interstate Gas Company to reopen these proceedings for the purpose of taking further evidence be and the same is denied;

(B) The rates and charges made, demanded, or received by Colorado Interstate Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 9, inclusive, shall be reduced by not less than \$2,065,000 per year.

(C) Colorado Interstate Gas Company shall file on or before April 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (B) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 15, 1942;

(D) Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(E) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (C) above, Colorado Interstate Gas Company shall cease and desist from making, demanding, and receiving any rates and charges which do not reflect the reductions ordered in paragraph (B) above.

By the Commission.

LEON M. FUQUAY, Secretary.

Order Reducing Rates, Colorado-Wyoming Gas Company.

Upon consideration of the orders previously issued in these proceedings, the evidence of record, the briefs filed, and the Commission having on this date issued Opinion No. 73, which is hereby incorporated and made a part hereof;

The Commission finds that:

(1) The Colorado-Wyoming Gas Company (hereinafter referred to as Wyoming Company), a Delaware corporation, owns and operates facilities for the transportation and sale of natural gas in interstate commerce for resale, and is a "natural-gas company" within the meaning of the Natural Gas Act. It operates a natural gas transmission system from a point near Littleton, Colorado, at the terminus of the Colorado Interstate Gas Company line, and extending in a northerly direction 114 miles to the city gate of Cheyenne, Wyoming. Approximately 98 percent of its total gas requirements are obtained from Colorado Interstate Gas Company, and the balance from local fields. Sales are made along the line to gas utilities and industrial customers and to Cheyenne Light, Fuel and Power Company at the terminus of the line;

(2) Natural gas sales to Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, Greeley Gas and Fuel Company, and Highway Gas Company are made under rate schedules on file with this Commission and are designated Colorado-Wyoming Gas Com-

pany FPC Rate Schedules Nos. 1 to 5, inclusive. The rates and charges demanded, observed, charged, and collected by Wyoming Company for the transportation and sale of natural gas for resale under FPC Rate Schedules Nos. 1 to 5, inclusive, together with all rules, regulations, practices, and contracts affecting such rates and charges, are subject to the jurisdiction of this Commission;

(3) The original undepreciated cost of Wyoming Company's gas plant as of December 31, 1939, is \$1,678,878;

(4) The amount of \$395,944 for accrued depreciation in the property of the Wyoming Company as of December 31, 1939, is the best possible estimate of the actual depreciation as of that date and is reasonable;

(5) The amount of \$1,282,934, (original cost of \$1,678,878 less accrued depreciation of \$395,944), is the depreciated original cost of Wyoming Company's gas plant as of December 31, 1939;

(6) An allowance of \$78,813 for additions to property from December 31, 1939, to December 31, 1941, and \$16,235 for working capital are sufficient and reasonable; these amounts added to the depreciated original cost, less \$12,183 of contributions in aid of construction, result in an amount of \$1,365,799 (accepted as \$1,366,000) as the proper prudent investment rate base upon which Wyoming Company is entitled to earn a fair rate of return;

(7) An annual rate of return of 6½ percent on the rate base of \$1,336,000, or \$88,790 is a fair and reasonable return to Wyoming Company;

(8) Reasonable and proper allowances for operating expenses, including an allowance for amortizing rate case expenses over a five year period, cost of purchased gas, depreciation and all taxes are as follows:

Operating expenses	\$ 85,364
Cost of purchased gas	498,103
Depreciation expense	38,280
Taxes	57,106
Total	<u>\$678,853</u>

(9) By order entered in these proceedings, as of this date, against Colorado Interstate Gas Company, the above cost of purchased gas has been reduced, effective on all bills rendered on and after May 15, 1942, by \$98,000 annually, thereby reducing the above total to \$580,853;

(10) The total cost of all services of Wyoming Company is the sum of \$580,853, paragraph (9) above, and \$88,790 for a fair return, or \$669,643; of this total \$462,700 is properly and reasonably allocated to sales made under FPC Rate Schedules 1 to 5, inclusive;

(11) The total revenues for 1939 under Rate Schedules Nos. 1 to 5, inclusive, of \$581,700 exceed the allocated costs found reasonable herein by \$119,000; the detail of this relationship of revenues to costs and the amount of excess for each purchaser is shown in Exhibit B attached to Opinion No. 73 and is made a part of this order by reference;

(12) Therefore, the rates and charges made, demanded, and received by Wyoming Company for and in connection with the transmission and sale of natural gas for resale in interstate commerce to the gas utilities listed in paragraph (2) above are unjust, unreasonable and excessive to the extent of \$119,000 per year;

(13) The rates and charges made, demanded, and received by Wyoming Company, after reflecting the reduction, hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The rates and charges made, demanded or received by Colorado-Wyoming Gas Company for the transportation and sale of natural gas for resale in interstate commerce under its Rate Schedules FPC Nos. 1 to 5, inclusive, shall be reduced by not less than \$119,000 per year;

(B) Colorado-Wyoming Gas Company shall file on or before May 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (A) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after June 15, 1942;

(C) Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(D) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (B) above, Colorado-Wyoming Gas Company shall cease and desist from making, demanding, and receiving any rates and charges which do not reflect the reductions ordered in paragraph (A) above.

By the Commission.

LEON M. FUQUAY, Secretary.

Petition of Colorado Interstate Gas Company to Reopen the Above Entitled Proceedings to Take Further Evidence.

Comes Now the Colorado Interstate Gas Company (hereinafter referred to as "this respondent"), defendant and respondent in the above entitled proceedings, and respectfully petitions this Honorable Commission to reopen the above entitled proceedings and to take further evidence therein.

The grounds relied upon for this petition, and a brief statement of the nature and purposes of the evidence to be adduced, which, as will hereinafter appear, is not merely cumulative, are as follows:

1. That, as appears from the record in this case, the evidence heretofore introduced as to the taxes of this respondent covered actual taxes only for the years up to and including the year 1939 and estimated taxes for the year 1940 and years subsequent thereto, and all the estimated taxes were based on the assumption that the tax laws in effect at the time of the hearing would continue unchanged.

Evidence of the actual taxes paid for the year 1940 as distinguished from the estimated taxes for said year heretofore introduced in evidence, is now available.

Since the close of the hearing in this case substantial changes have been made in the tax laws applicable to this

respondent, resulting in substantially increased rates of taxation. The Federal taxes payable by this respondent for the year 1941 under the new revenue laws are estimated at \$1,609,000.00 as against \$684,608.00 paid for the year 1940, or an increase of \$915,392.00. This is a 134% increase. As applicable to the net earnings from the sale of gas from the "Denver Line" of this respondent, the record now shows that \$496,341.00 was estimated as the total Federal taxes payable for the year 1940, and \$683,784.00 was estimated as payable for 1941, whereas \$493,290.00 was actually paid for 1940 and \$1,233,779.00 is now estimated as payable for 1941. This shows an increase of Federal taxes applicable to net earnings from the sale of gas from the Denver Line of this respondent of \$740,489.00, being 150% increase, in 1941 over 1940. Substantially all of said increase in taxes, above said estimates now appearing in evidence, is due to the increased tax rates under the new revenue laws adopted since the close of the hearing in this case.

Inasmuch as the estimates of taxes, not only for the years 1940 and 1941 but also for the years 1942 to 1947, inclusive, heretofore introduced in evidence were based upon the tax rates in existence before the increased tax rates made effective by the new revenue laws, the estimates contained in the record for the years 1942 to 1947, inclusive, will also be increased in proportion to the increase in the new tax rates, and this upon the assumption that the present increased tax rates are not further increased by subsequent legislation. Such further increase has been proposed by the Secretary of the Treasury and seems certain.

2. There was introduced in evidence estimates as to the cost of additional property necessary to meet the demands upon this respondent's pipeline system through the year 1947. The estimate of the cost of such necessary additional property for the year 1940 was \$111,736.00. It was estimated that no additional property would be necessary in the year 1941, and the estimate for the year 1942 for such additional property was \$214,326.00. The actual cost of such necessary additional property for the year 1940 is \$215,254.94, and for the year 1941 \$375,205.36, or a total of

\$590,460.30 for the years 1940 and 1941 combined. This is \$478,724.30 in excess of the estimated cost for 1940 and 1941, and is \$264,398.30 in excess of the estimated cost of necessary additional property for the years 1940, 1941 and 1942 now appearing in evidence. There is also available at this time evidence of changed conditions occurring since the close of the hearing in these proceedings, because of which estimates of the cost of additional necessary property for the years 1942 to 1947, inclusive, or some of them, will have to be revised upwards.

3. That since June 30, 1940, as of which date evidence of value was introduced in connection with the reproduction cost new of this respondent's properties, the cost of labor and material, particularly pipe, necessarily and properly to be considered in determining the reproduction cost new of said properties, has substantially increased, with the result that the estimate of reproduction cost new as submitted in evidence on behalf of this respondent is substantially less than such estimate of reproduction cost new as of December 31, 1941, or as of the date of the filing of this petition.

4. Because of the increase in labor costs, as alleged in Paragraph 3 above, the general costs of maintenance and operation have likewise increased, as of December 31, 1941, and as of the date of the filing of this petition, substantially above such costs as shown in the operating statements submitted in evidence, and the estimates for the future will have to be revised upwards to properly reflect such increased costs and expense.

5. Exhibit 290, introduced by this respondent, sets forth a "Statement of Reductions or Suspensions of Service to December 31, 1940." After the close of the hearing in this proceeding, and starting with the 22nd day of September, 1941, and continuing to September 30, 1941, there occurred the most serious interruption of service that has taken place in the history of the operation of this respondent's pipeline system, said interruption being caused by wash-outs on the main line. Evidence is available showing the cause and extent of these washouts, and the time and extent of the interruption and curtailment of natural gas service.

resulting therefrom to the various customers of this respondent. Such evidence will show that all industrial customers were cut off immediately upon the discovery of the break, and that service of gas for domestic consumers was seriously curtailed during the period in question, although such gas as was in the pipeline north of the break was available for limited domestic service during such period. Such evidence will also show the service preference in favor of domestic gas at the time of this interruption and curtailment, and will further show one of the hazards of this business in which this respondent is engaged.

This respondent states that it is prepared to introduce evidence in support of each and all of the statements hereinabove made. Said evidence is not merely cumulative but, as appears from the above statements, relates to facts which have occurred since the closing of the hearing in these proceedings. The record now before this Commission is based upon peace-time operations. The war in which the United States is now engaged has seriously affected the operations of this respondent and must necessarily continue seriously to affect those operations during the uncertain duration of the war, and no doubt for a long period thereafter. Obviously because of the changed conditions brought about by the war, evidence now in the record as to the past operations of this respondent is a much less safe or sound criterion upon which to gauge the future operations of this respondent than it was at the time such evidence was introduced. It is respectfully submitted that this Commission will take notice of the serious changes affecting all industry, including this respondent, already brought about and which on account of the war will continue to result in a manner presently unforeseeable. This respondent desires to introduce further evidence of the particular effect which the war has already had upon its operations and to supplement and revise its evidence now in the record relating to its future operations. The purpose of the evidence to be adduced in support of said statements is to establish the truth of said statements of facts, all of which it is submitted are material, important and pertinent to the issues raised in these proceedings, and

will serve to bring the record up to date, and should be considered by the Commission in reaching its findings and conclusions on the various issues presented in these proceedings.

Dated this 9th day of March, 1942.

COLORADO INTERSTATE GAS COMPANY,

By F. H. LERCH, JR., President.

30 Rockefeller Plaza, Room 3000,
New York, N. Y.

WILLIAM A. DOUGHERTY,

C. W. COOPER,

30 Rockefeller Plaza, Room 3000, New York, N.Y.

SMITH, BROCK, AKOLT & CAMPBELL,

ELMER L. BROCK,

E. R. CAMPBELL,

ELMER L. BROCK, JR.,

931 Fourteenth Street, Denver, Colorado.

Attorneys for Colorado Interstate Gas Company.

[Verification and certificate of service omitted.]

Received Mar. 11, 1942, Federal Power Commission.

Petition of Canadian River Gas Company to Reopen the
Above-Entitled Proceedings to Take Further Evidence.

Comes Now the Canadian River Gas Company (hereinafter referred to as "this respondent"), defendant and respondent in the above-entitled proceedings, and respectfully petitions this Honorable Commission to reopen the above-entitled proceedings and to take further evidence therein.

The grounds relied upon for this petition, and a brief statement of the nature and purposes of the evidence to be adduced, which, as will hereinafter appear, is not merely cumulative, are as follows:

1. That, as appears from the record in this case, the evidence heretofore introduced as to the taxes of this respondent covered actual taxes only for the years up to and including the year 1939 and estimated taxes for the

year 1940 and years subsequent thereto, and all the estimated taxes were based on the assumption that the tax laws in effect in 1939 would continue unchanged.

Evidence of the actual taxes paid for the year 1940 and those payable for the year 1941, as distinguished from the estimated taxes for said years heretofore introduced in evidence, is now available. Said taxes for the years 1940 and 1941 are substantially in excess of the estimates for said years now appearing in the record.

Inasmuch as the estimates of taxes not only for the years 1940 and 1941 but also for the years 1942 to 1947, inclusive, heretofore introduced in evidence were based upon the tax rates in existence before the increased tax rates made effective by the new revenue laws, the estimates contained in the record for the years 1942 to 1947, inclusive, will also be increased in proportion to the increase in the new tax rates, and this upon the assumption that the present increased tax rates are not further increased by subsequent legislation. Such further increase has been proposed by the Secretary of the Treasury and seems certain.

2. There were introduced in evidence estimates as to the cost of additional property of this respondent through the year 1947. The costs of additional property actually incurred in the years 1940 and 1941, respectively, which are in the aggregate approximately \$450,000, are now available for the record. There is also available at this time evidence of changed conditions occurring since the close of the hearing in these proceedings because of which estimates of the cost of additional necessary property for the years 1942 to 1947, inclusive, or some of them, will have to be revised upwards substantially.

3. That since June 30, 1940, as of which date evidence was introduced in connection with the reproduction cost new of this respondent's portion of the Denver line, the cost of labor and material, particularly pipe, necessarily and properly to be considered in determining the reproduction cost new of said properties has substantially increased, with the result that the estimate of reproduction cost new of this respondent's portion of the Denver line, as submitted in evidence, is substantially less than such estimate of repro-

duction-cost new as of December 31, 1941, or as of the date of the filing of this petition.

4. Because of the increase in labor and material costs, as alleged in Paragraph 3 above, drilling costs and the general costs of maintenance and operation have likewise increased as of December 31, 1941 and as of the date of the filing of this petition substantially above such costs as shown in the evidence heretofore introduced, and the estimates for the future will have to be revised upwards to properly reflect such increased costs and expense.

5. Exhibit 290 heretofore introduced in this case sets forth a "Statement of Reductions or Suspensions of Service to December 31, 1940." After the close of the hearing in this proceeding, and starting with the 22nd day of September, 1941, and continuing to September 30, 1941, there occurred the most serious interruption of service that has taken place in the history of the operation of this respondent's business, said interruption being caused by washouts on the Denver line of the Colorado Interstate Gas Company in northeastern New Mexico. Evidence is available showing the cause and extent of the interruption and curtailment of natural gas service resulting therefrom. Such evidence will show that when said washouts occurred and delivery of gas by this respondent to Colorado Interstate Gas Company was interrupted thereby, all industrial customers of Colorado Interstate Gas Company were cut off immediately upon discovery of the break, and that service of gas for domestic consumers under the Denver line was seriously curtailed during the period in question, although such gas as was in the pipeline north of the break was available for limited domestic service during such period. Such evidence will also show the service preference in favor of domestic gas at the time of this interruption and curtailment and will further show one of the hazards of this business in which this respondent is engaged.

This respondent states that it is prepared to introduce evidence in support of each and all of the statements hereinabove made. Said evidence is not merely cumulative but, as appears from the above statements, relates to facts which have occurred since the closing of the hearing in these proceedings. The record now before this Commission is based upon peace-time operations. The war in which the

United States is now engaged has seriously affected the operations of this respondent and must necessarily continue seriously to affect those operations during the uncertain duration of the war, and no doubt for a long period thereafter. Obviously because of the changed conditions brought about by the war, evidence now in the record as to the past operations of this respondent is a much less safe or sound criterion upon which to gauge the future operations of this respondent than it was at the time such evidence was introduced. It is respectfully submitted that this Commission will take notice of the serious changes affecting all industry, including this respondent, already brought about and which on account of the war will continue to result in a manner presently unforeseeable. This respondent desires to introduce further evidence of the particular effect which the war has already had upon its operations and to supplement and revise its evidence now in the record relating to its future operations. The purpose of the evidence to be adduced in support of said statements is to establish the truth of said statements of facts, all of which it is submitted are material, important and pertinent to the issues raised in these proceedings, and will serve to bring the record up to date, and should be considered by the Commission in reaching its findings and conclusions on the various issues presented in these proceedings.

Dated this 10th day of March, 1942.

CANADIAN RIVER GAS COMPANY,

By P. C. SPENCER,

Its Vice President, Room 2757
630 Fifth Ave., New York, N.Y.

P. C. SPENCER,

Room 2757, 630 Fifth Avenue, New York, N.Y.

ADKINS, PIPKIN, MADDEN & KEFFER,

CHARLES H. KEFFER,

930 Fisk Bldg., Amarillo, Texas,

SMITH, BROCK, AKOLT & CAMPBELL,

JOHN P. AKOLT,

931 Fourteenth St., Denver, Colorado,

Attorneys for Canadian River Gas Company.

[Verification omitted.]

Received March 11, 1942, Federal Power Commission.

Acknowledged March 11, 1942, Secretary.

Petition of Colorado Interstate Gas Company for
Rehearing and to Reopen.

Now Comes the Colorado Interstate Gas Company, one of the Defendants-Respondents in the above-entitled and numbered causes, hereinafter sometimes referred to as Petitioner or as Respondent or sometimes as Colorado Interstate, and referring to its "Request for Findings of Fact" heretofore filed herein, and to this Commission's "Order Reducing Rates Colorado Interstate Gas Company," and accompanying Opinion No. 73, dated March 18, 1942, but not served on this petitioner until on or about March 25, 1942, and to "Petition of Colorado Interstate Gas Company to Reopen the Above Entitled Proceedings to Take Further Evidence," dated March 10, 1942, and filed March 11, 1942, and respectfully applies for a rehearing in the above entitled causes upon each and all of the grounds set forth in the following Specifications of Errors.

Specifications of Errors.

1.

Without waiving but still insisting upon each and all of the Specifications of Errors following this specification, and without waiving but still insisting upon its pleas, objections and contentions as to the jurisdiction of the Commission over Colorado Interstate, it is respectfully submitted the Commission erred in denying Colorado Interstate's petition of March 10, 1942, to reopen the above entitled proceedings to take further evidence as to facts transpiring and developing since the closing of the hearing on April 21, 1941. The Commission states on page 3 of its Opinion that the granting of said petition was opposed by the Mayor of the City and County of Denver by letter, and by the Wyoming Public Service Commission by telegram. No copy of such letter or telegram was served upon petitioner. The Commission's statement on page 3 of its opinion that it is fully aware of the recent trends in costs, and its statement that it is also aware of the recent trends in revenues, is not based on substantial evidence in this case, and the Commission's "awareness" is not equivalent to, and cannot be substituted for, substantial evidence as to facts developing after April 21, 1941, which your petitioner offered to present. The statement on page 3 of the opinion that the Commission has

given due consideration to such trends of costs and revenues in the orders entered in these proceedings, discloses that the Commission has based its findings and orders upon matters and facts not in this record. The statement on page 39 of the opinion that the Commission is aware of substantial increase in natural gas sales due to the country's war efforts, and the statement on page 40 that in the natural gas industry operating labor and materials are a comparatively small part of the total costs, that it may reasonably be expected that revenues will increase as rapidly if not more rapidly than costs, and the statement on page 40 that for the purpose of the Commission's order, 1939 revenues and costs are representative of the relationship that will exist between these items in the immediate future, and the statement on page 40 of the opinion that the use of 1939 figures undoubtedly resolves most of the doubts as to future operation conditions in favor of the companies, and each of said statements are not supported by substantial evidence in this case, and cannot be substituted for substantial evidence, and such "awareness" of the Commission, and such conclusions and opinions cannot be substituted for substantial evidence as to the facts transpiring since the close of the hearing on April 21, 1941, since which time this country became actively engaged in war, and which evidence this petitioner offered to present. The basis for such "awareness," and conclusions and opinions is not set forth at any place in the Commission's Order or Opinion. Colorado Interstate's Petition to Reopen is hereby renewed upon each and all of the grounds set forth therein.

2.

The Commission erred in basing its findings and order upon operations of the Respondent for the pre-war year 1939, and in not giving consideration to operations, and the facts and evidence with respect thereto, of subsequent years.

3.

The Commission erred in abrogating the contracts for the purchase and sale of gas of this petitioner, and erred in refusing to make the findings of fact requested by petitioner, and numbered 1 to 12, inclusive, relating to the business and contracts of this petitioner, and erred in finding in its Findings 1 and 3, and elsewhere in its Opinion, that said

contracts which the Commission erroneously characterized as "FPC Rate Schedules Nos. 1 to 9, inclusive" were subject to its jurisdiction, and could be abrogated by it.

4.

The Commission erred in refusing to find that all of the contracts of respondent for the purchase and sale of gas were made, and by it substantially performed, at a time when neither the respondent nor any other contracting party contemplated any change or modification, through the regulatory process or otherwise, and long prior to the effective date of the Natural Gas Act.

5.

The Commission erred in refusing to find that since said contracts were made no material change in the extent of respondent's business and operations or in the respondent's methods of carrying on such business and operations has occurred.

6.

The Commission erred in refusing to find that in entering into said contracts and in providing and investing money for the performance thereof and in the substantial performance thereof, respondent relied upon prices for gas to be paid for the full project term and made its investment in said project in reliance on said contracts and would not have made said investment except on the basis of said contracts.

7.

The Commission erred in refusing to find that the contracts of the respondent for the purchase and sale of gas and the prices for gas therein agreed to are not subject to decrease or increase by the Commission prior to the expiration of the terms or lives of said contracts.

8.

The Commission erred in refusing to find that the present contracts of respondent fixing the gate price for gas to its customers, the several distributing companies, cannot now be abrogated because of the absence of any evidence establishing the necessary "public interest" as distinguished from the interest of the distributing companies, and erred

in not making the findings of fact requested by this petitioner and numbered 17 to 21 inclusive.

9.

The Commission erred in refusing to find that each of respondent's contracts fixing the price of gas were arrived at after full investigation and between competent and well-informed parties, free to contract or not.

10.

The Commission erred in refusing to find that the contract with Public Service fixing the price for gas at the Denver gate was negotiated over a period lasting more than a year and after many discussions and conferences with the Mayor and other representatives of the city of Denver, and the gate rate therein prescribed was fixed only after independent investigation by the city of Denver, "taking into consideration all economic factors involved," including the gate rate, and after rates of Public Service to the consumer had been fixed by Denver for the full unexpired term of its franchise, based on said gate rate.

11.

The Commission erred in refusing to find that the contract with Pueblo Gas and Fuel fixing the price for gas at the city gate was negotiated over several months between respondent and Pueblo Gas and Fuel Company, and the gate rate was fixed with the full knowledge of the officials of Pueblo and only after the city had adopted rates to be charged by the distributing company to the consumers for the full term of the franchise to the distributing company, which rates were based on said gate rate.

12.

The Commission erred in refusing to find that the city of Colorado Springs, as owner and operator of its municipal distribution system, had a contract with one Arthur K. Lee for its supply of gas at the city gate from the Hugoton Kansas Field, guaranteed by a \$25,000 performance deposit, but in 1931, before gas under said contract was delivered, the city modified the contract with Lee to provide a 40c gate rate in contemplation of his assignment of said contract to respondent.

13.

The Commission erred in refusing to find that the present contract prices of respondent are reasonable as evidenced by the fact that they were all arrived at after long negotiation between adverse parties, free to contract or not, namely, respondent and the several distributing companies, and after full investigation in the case of the cities of Denver, Pueblo and Colorado Springs respectively.

14.

The Commission erred in refusing to find that the gas now being sold displaced manufactured gas in Denver, Pueblo and Colorado Springs and the savings to the consumers for the same heat units under the cost of manufactured gas range from 32% to 86%, depending upon volumes used.

15.

The Commission erred in refusing to find that for house heating purposes alone in Denver, the present cost per therm to the consumer of natural gas is 6c compared to 14c per therm for manufactured gas prior to the change-over.

16.

The Commission erred in refusing to find that the present contract prices of respondent are reasonable as evidenced by the fact that they have permitted the ultimate consumers to purchase from the distributing companies heat units at much less cost than was the case when manufactured gas was sold to them.

17.

The Commission erred in refusing to find that natural gas is being sold in this territory in competition with abundant, accessible and cheap supplies of coal, fuel oil and to a lesser extent in competition with other fuels.

18.

The Commission erred in refusing to find that Colorado produces more coal than any other state west of the Mississippi River, of which 50% to 60% is mined within 50 miles of the consuming area centering in Denver, Colorado Springs and Pueblo, and that this consuming area is also within economic transportation distance of large reserves of fuel oil.

19.

The Commission erred in refusing to find that the cost to the consumer for house heating in the Denver area per therm of natural gas is 25% to 30% more than the less convenient coal, which represents the difference the consumer, free to purchase coal, is willing to pay for the convenience factors in favor of natural gas and to be relieved from the investment and supply of coal for future use and for storage facilities.

20.

The Commission erred in refusing to find that the cost to consumer for house heating in the Denver area is the same per therm as that for heating with Grade No. 1 fuel oil; that is, 6c per therm, and by the use of Grade No. 2 fuel oil, such heat units may be had at 5c per therm.

21.

The Commission erred in refusing to find that the present contract gate prices of respondent are reasonable as evidenced by the fact that they have permitted the ultimate consumer to purchase heat units at costs that compare favorably with the costs of coal, fuel oil and other fuels, after taking into consideration the convenience factors in favor of natural gas.

22.

The Commission erred in refusing to find that the sales of natural gas by distributing companies supplied by respondent, have increased substantially despite competition with other fuels.

23.

The Commission erred in refusing to find that sales by respondent for the year 1929, the first full year of sales after the cut-over of Mcf. at contract pressure base, amounted to 3,534,927 of resale domestic gas and 776,291 of resale industrial gas. Sales for 1939 were 6,818,497 of resale domestic and 4,779,576 of resale industrial.

24.

The Commission erred in refusing to find that house heating customers in the Denver area have increased from less than 1,000 in 1927, prior to the cut-over, to approxi-

mately 17,000 at this time, and the market for domestic cooking and water heating in the Denver area is now "sold" or "saturated."

25.

The Commission erred in refusing to find that aggregate sales of respondent's three distributing company customers in Denver, Colorado Springs and Pueblo were 3,488,019.6 Mcf. in 1927 and 9,376,232 Mcf. in 1939, with 1,150,887 Million Btu. heat units in 1927 and 7,612,048 million Btu. heat units in 1939, for which they received in the aggregate \$2,731,739.35 in revenue in 1927 and \$5,048,972.48 in revenue in 1939; that is, such aggregate sales increased in Mcf. by 2.69 times and in millions of Btu. by 6.61 times and in revenue by 1.85 times.

26.

The Commission erred in refusing to find that the present contract gate prices are reasonable as evidenced by the substantial increase in the use of natural gas, despite competition with other fuels.

27.

The Commission erred in refusing to find that all of the contracts of the respondent with its customers, the distributing companies, provided that, in case of shortage, gas shall be supplied to the domestic customers in preference to the industrial customers and that such gas shall have priority use of the facilities, and such provision has been carried out and enforced in actual operations, and the Commission erred in not reopening this proceeding to permit petitioner to show the facts of such preference at the time of the breaks in petitioner's pipe line in September, 1941.

28.

The Commission erred in refusing to find that the respondent's contracts with Public Service Company for the sale of gas at the Denver gate and with Pueblo Gas and Fuel Company for the sale of gas at the Pueblo gate are coterminous with the franchises of those distributing companies from those respective cities, which terminate in 1948, and the renewals of said franchises depend upon a favorable vote of the taxpaying electors; and respondent's contract

with the City of Colorado Springs for the sale of gas to its municipally owned distributing system also terminates in 1948, and the other contracts of the respondent also terminate at approximately the same time.

29.

The Commission erred in its Finding No. 2, in finding that Colorado Interstate is an "affiliate" of Canadian, and that "the systems of the two companies are operated as a single property."

30.

In its Finding No. 4, the Commission erred in finding that the original un depreciated cost of Colorado Interstate's gas plant, as of December 31, 1939, was \$11,879,409.00, and erred in not finding that such original un depreciated cost, as of such date (December 31, 1939, or January 1, 1940) meaning thereby physical properties, plus cost of necessary contracts, was at least \$14,670,749.

31.

The Commission erred in its finding numbered 4, and in its statement on page 19 of its Opinion, in eliminating from the un depreciated original cost of Colorado Interstate's property \$440,050 on account of "past expenses now capitalized," and erred in not finding that said sum represented the original cost of gas plant, used and useful, which sum was treated for company purposes as an expense item, and at a time long prior to any attempted regulation; and erred in not finding said sum to be a part of the actual legitimate cost of petitioner's property, which should properly be included in the original cost of said property.

32.

In its finding numbered 4, and in its Opinion on page 19, the Commission erred in eliminating \$2,352,940, original cost of contracts, and erred in its statements on pages 21 and 22 of its Opinion as to the nature of said contracts, the circumstances under which they were made, and the nature and circumstances under which the payments were made, and erred in not finding that said contracts were negotiated at arm's length after prolonged consideration between parties free to contract or not, and erred in not finding

that said contracts were essential to the project of supplying the gas involved in this controversy, and erred in not finding that said project would not have been possible but for the execution of said contracts, and erred in not finding that property of the cash value of at least \$2,352,940 was paid for said contracts, and erred in not allowing said sum as original cost of contracts in addition to \$250,000 which it did allow as cost of contract for sale of gas at Colorado Springs. -

33.

The Commission erred in not finding that the original cost of respondent's portion of the physical properties of the Denver Line, exclusive of cost of contracts, and exclusive of necessary working capital, used and useful in transporting and selling gas to January 1, 1939, and as estimated, to January 1, 1947, on the basis of evidence existing at the close of the hearing on April 21, 1941, is as follows:

1939.....	\$12,052,646
1940.....	12,081,142
1941.....	12,192,878
1942.....	12,192,878
1943.....	12,407,204
1944.....	12,407,204
1945.....	12,407,204
1946.....	12,407,204
1947.....	12,407,204

and the Commission erred in not reopening this proceeding as aforesaid to permit petitioner to show that the estimates of future additions to the physical properties above stated were too low, on account of facts developing subsequent to the close of the hearing on April 21, 1941.

34.

In its findings numbered 5 and 6, and in its statements on pages 24 to 35, inclusive, of its Opinion, the Commission erred in its findings and statements with respect to accrued depreciation, and erred in finding that the amount of \$2,674,805, plus \$118,605 for accrued amortization, or a total of \$2,874,805, for accrued depreciation in the property of the Colorado Interstate as of December 31, 1939, is the best possible estimate of the actual depreciation as of that

date, and is reasonable," and the Commission erred in making such finding in that said sum of \$2,674,805 does not represent the actual depreciation in petitioner's property, and the amount of \$118,605 represents only the accrued amortization with respect to the cost of one contract only. The Commission erred in deducting from the cost of petitioner's physical property any amount in excess of the observed depreciation and to the extent that the amount of \$2,674,805 represents a return of capital investment, in addition to the actual deterioration of physical property, there was error in making such deduction from the cost of petitioner's property.

35.

The Commission erred in refusing to find that the actual depreciation accumulated in respondent's portion of the physical properties of the Denver line at December 31, 1938 (January 1, 1939), as determined by a field inspection and observation and the correlative present condition of such properties were as follows:

Description	Accumulated Depreciation Per-Cent	Condition of Properties Per Cent
Land	00.0%	100.0%
Land Rights (Rights of Way)....	00.0	100.0
Pumping Station Structures.....	14.0	86.0
Measuring and Regulating Station Structures	13.0	87.0
Other Transmission System Structures	13.0	87.0
Mains	5.0	95.0
Pumping Station Equipment.....	12.0	88.0
Measuring and Regulating Station Equipment	10.0	90.0
Office Furniture & Equipment....	20.0	80.0
Transportation Equipment	49.0	51.0
Tools and Work Equipment.....	20.0	80.0
Communication Equipment	16.0	84.0

36.

The Commission erred in refusing to find that the cost of reproduction new less observed actual depreciation of

respondent's portion of the physical properties of the Denver line as of December 31, 1938 (or January 1, 1939), was at least \$11,385,356, and was at June 30, 1940, at least \$11,431,077, based on costs obtaining at the time of the hearing herein, and erred in refusing petitioner an opportunity to present evidence, as requested, to show that the reproduction cost less depreciation new at this time would be in excess of said sums on account of increase in costs subsequent to the close of the hearing on April 21, 1941.

37.

The Commission erred in not finding the original cost of respondent's portion of the physical properties of the Denver line, less observed actual depreciation to January 1, 1939, and as estimated, to January 1, 1947, based on evidence of cost up to the close of the hearing on April 21, 1941, is as follows:

1939	.....	\$11,289,055
1940	.....	11,317,551
1941	.....	11,429,287
1942	.....	11,429,287
1943	.....	11,643,613
1944	.....	11,643,613
1945	.....	11,643,613
1946	.....	11,643,613
1947	.....	11,643,613

38.

In its finding numbered 7, the Commission erred in its finding that only \$337,000 was necessary for additions to property from December 31, 1939, to December 31, 1941.

39.

The Commission erred in not granting the petition to reopen to take further evidence referred to in assignment of error numbered 1 hereinabove, and in refusing to permit this petitioner to show that, whereas the estimate of the cost of such necessary additional property for the year 1940 was only \$111,736, and for 1941 zero, and for 1942 only \$214,326, in fact the actual cost of such necessary additional property for the year 1940 had been \$215,254.94.

and for the year 1941 had been \$375,205.36, or a total of \$590,460.30 for the years 1940 and 1941, combined, which sum is \$478,724.30 in excess of the estimated costs for 1940 and 1941, and is \$264,398.30 in excess of the estimated costs for such necessary additional property for the years 1940, 1941 and 1942 now appearing in evidence, and the Commission erred in not reopening the case and making findings to that effect, and also in not making findings of increases in estimated expenditures for additional property for the years 1940 to 1947, inclusive, based on increased costs since the close of the hearing herein on April 21, 1941.

40.

In its finding numbered 7, the Commission erred in finding that \$109,065 for working capital was sufficient and reasonable, and erred in eliminating all allowances for minimum bank balances.

41.

The Commission erred in refusing to find that the necessary working capital of respondent for the operation of its portion of the Denver line for each of the years 1939 to 1947, based on operating expenses and conditions obtaining up to the time of the close of the hearing on April 21, 1941, was not less than:

1939	\$120,000
1940	127,000
1941	134,000
1942	142,000
1943	150,000
1944	151,000
1945	153,000
1946	154,000
1947	155,000

42.

In its finding numbered 7, and in its Opinion on pages 38 and 53 and elsewhere in its Opinion, the Commission erred in finding that \$9,535,000 was the maximum rate

base upon which petitioner is entitled to earn a fair rate of return, and the Commission erred in not finding as the proper rate base the present fair value of all of petitioner's property as specified in the above assignments 30 to 41, inclusive.

43.

The Commission erred in not finding that the revenues of respondent from gas sold off of the Denver line during the year 1939 and as estimated for the years 1940 to 1947 are as follows:

Year	Sale of Gas for Resale to Domestic Consumers	Sale of Gas for Resale to Industrial Consumers	Direct Sale Gas to Industrial Consumers
1939	\$2,297,015	\$ 641,368	\$1,370,849
1940	2,556,900	645,743	1,276,525
1941	2,724,975	699,282	1,389,266
1942	2,841,775	724,277	1,392,016
1943	2,945,775	747,492	1,340,566
1944	3,057,500	770,243	1,343,316
1945	3,192,600	789,574	1,346,066
1946	3,192,600	789,574	1,346,066
1947	3,192,600	789,574	1,346,066

44.

The Commission erred in its finding numbered 12, and in its statements on page 49 of its Opinion in including, for the purpose of determining reasonable rates for gas sold off the Denver line, revenues from its sales at Gray, Oklahoma, to the Natural Gas Pipeline Company of America.

45.

The Commission erred in refusing to find that the cost to respondent at contract prices for all gas delivered to it at Clayton Junction for the Denver line (exclusive of cost of gas delivered to it at Gray, Oklahoma, for sale to the Natural Gas Pipeline Company of America) was, for 1939, \$1,221,008, and for 1940, \$1,323,494, and, without taking

into account abnormal expenses arising out of the present war conditions, that such costs are estimated to be as follows:

1941.....	\$1,293,088
1942.....	1,238,270
1943.....	1,244,759
1944.....	1,207,771
1945.....	1,173,875
1946.....	1,232,651
1947.....	1,733,846

46.

The Commission erred in failing to make proper findings as to the cost of gas, either on a contract basis or otherwise, to respondent, sold to the Natural Gas Pipeline Company of America at Gray, Oklahoma, and erred in its Finding No. 9 that the cost of all gas sold to respondent, both at Gray Junction and at Clayton Junction, in 1939 was \$2,112,951.

47.

In its Finding No. 8, and in its statements on pages 49, 50, 51, 52 and 53 of its Opinion, the Commission erred in finding that a rate of return of $6\frac{1}{2}\%$ on the rate base is fair and reasonable to this petitioner, and erred in not finding that said rate of $6\frac{1}{2}\%$ would necessitate rates for the gas sold by respondent lower than the lowest reasonable rate, and erred in not finding that said rate of return of $6\frac{1}{2}\%$ would necessitate rates for gas sold by respondent that would operate to confiscate its property contrary to the Fifth Amendment of the United States Constitution.

48.

The Commission erred in refusing to find that the rate of return necessary to this petitioner upon the fair value of its property devoted to the transportation and sale of gas is not less than 8%.

49.

In its Finding No. 9, and in its Opinion on pages 44 and 45, the Commission erred in discarding and ignoring, as it

states it does, all of respondent's evidence as to operating expenses, and erred in finding and allowing as operating expenses (exclusive of cost of gas, depreciation expense, amortization expense and taxes) only the annual amount of \$475,643.

50.

The Commission erred in refusing to find that the operating expenses and operating taxes (exclusive of cost of gas, income, capital stock and like taxes, and depreciation and amortization expenses) of respondent for the Denver line for 1939 was \$607,369, and for 1940 was \$621,100, and basing estimates for future expenses on the normal trend of such expenses in past normal times, and without taking into account additional expenses which might occur from the defense program or war conditions, would be in the following estimated amounts:

1941.....	\$643,500
1942.....	655,600
1943.....	688,900
1944.....	658,000
1945.....	670,300
1946.....	683,000
1947.....	694,300

and the Commission erred in not permitting the petitioner to reopen and submit evidence that such estimates of expense were too low on account of the rising expense of operations due to the war and other conditions transpiring after the closing of the hearing herein on April 21, 1941.

51.

In its Finding No. 9, and in its statements on pages 24 to 35, inclusive, the Commission erred in finding that the proper depreciation expense was only \$268,305, and the Commission erred in not using as the amount to be depreciated, the fair value of the depreciable property of petitioner at the time it was overtaken by regulation, and in not using as the term or period over which depreciation is to be taken, the period during which the petitioner can remain in business, and erred in not finding that because of the termination of petitioner's sales contracts, said period

can not be assured beyond 1948; and in any event erred in refusing to find that said period could be extended beyond 1956, and erred in failing to disclose in its Opinion or Findings the basic facts on which it determined its depreciation expense allowance, and erred in the application of the service-life principle in this case. The allowance for annual depreciation expense is intended by the Commission to provide for the complete return of all invested capital to petitioner by the end of the economic life of its property. Even on the basis that the economic life of petitioner's pipe line is the number of years assumed by the Commission, said allowance will do no more than provide for the retirements necessary during that long period, and no provision is made for returning to petitioner the additional capital required to make replacements and additions and betterments during the future fifty years. The result is that petitioner never will recover its full capital investment unless the annual allowance for depreciation expense is increased.

52.

In its Finding No. 9, and in its statements on pages 19, 20, 21, 22, 24, 25, 26 and 33, the Commission erred in allowing only \$13890 for amortization expense on account of amortization of cost of contracts, and the Commission erred in disallowing amortization expense on account of the cost of other essential contracts originally costing \$2,352,940.

53.

In its Finding No. 9, and in its statements on pages 44, 45 and 46, the Commission erred in finding and allowing only \$637,641 as the proper annual amount for expenses on account of taxes.

54.

The Commission erred in refusing to find that the State and Federal income taxes, and the Federal capital stock tax, excess-profits and defense taxes, applicable to net income from the sale of gas off the Denver line alone for 1939 were \$340,119, and for 1940 were \$521,875, and, assuming that the rates obtaining in all 1940 tax laws are not

increased, such taxes were estimated for future years as follows:

1941.....	\$ 711,922
1942.....	825,240
1943.....	846,001
1944.....	979,686
1945.....	1,095,473
1946.....	1,099,259
1947.....	781,284

55.

The Commission erred in refusing to reopen and permit the petitioner to show that the Federal taxes alone payable by this respondent for the year 1941, under the new revenue laws, upon all gas sales are approximately \$1,600,000, as against \$684,608 paid for the year 1940, or an increase of \$915,392, or a 134% increase, and that said taxes payable in respect of net earnings from the Denver line are, for 1940 \$493,290, and are, for 1941 \$1,233,779, and that the increase of such Federal tax, applicable to such net earnings from the sale of gas from the Denver line, amounted to \$740,489 for 1941 over 1940, or an increase of 150%, and that the estimates for such taxes now contained in the record for the years 1942 to 1947, inclusive, would, without further increase in rates, have to be revised upwards.

56.

In its Finding No. 10, the Commission erred in finding that \$2,957,430 was a reasonable and proper allowance for operating expenses, cost of gas purchased, depreciation, amortization and all taxes.

57.

In its Finding No. 11, the Commission erred in finding that \$3,577,205 was a proper allowance for the total cost of all services of this petitioner, including a fair return, and in finding that of the total sum of \$3,577,205, \$2,373,000 was properly and reasonably allocated to the sales of this respondent, under its gas sales contract, which the Commission in said finding erroneously characterized as FPC Rate Schedules Nos. 1 to 9, inclusive.

58.

In its Finding No. 12, the Commission erred in finding that the total revenues for 1939 under said "Rate Schedules Nos. 1 to 9, inclusive" was \$4,438,000, and erred in holding that said sum exceeded the "allocated cost" by \$2,065,000, and erred in finding that said revenues were excessive in any amount.

59.

In its Finding No. 12, and in its statements in its opinion on pages 53, 54, 55, 56, 57 and 58, and in its Exhibit "A" to its Opinion, Findings and Order, the Commission erred in its findings as to costs, and in its findings as to the allocation of said costs. The Commission erred in making unsupported conclusions with respect to these matters, and erred in not making basic findings of fact with respect thereto, and in not disclosing in its so-called findings and in its Opinion the real method or basis used in arriving at its conclusions, but to the extent that petitioner is able now to discern the method so concealed and not disclosed: the following specifications are made:

(a) The Commission erred for reasons hereinabove specified in stating that Colorado Interstate had any earnings in excess of a reasonable return.

(b) The Commission erred in stating that the Commission's determinations of earnings is based upon all of the components of the rate case.

(c) The Commission erred in stating that the properties and business of Canadian, Colorado Interstate and Colorado-Wyoming constitute for all practical purposes a single project.

(d) The Commission erred in finding that it is necessary or proper to alter the prices paid by Colorado Interstate for gas purchased from Canadian.

(e) The Commission erred in finding that an allocation of physical property need not be made in arriving at a proper determination of rates for the sale of gas within the jurisdiction of the Commission, and erred in not making such allocation of physical property.

(f) The Commission erred in stating that Colorado Interstate did not submit in evidence a complete presentation of its entire operations, broken down between jurisdictional and non-jurisdictional operations.

(g) The Commission erred in wholly ignoring and discarding all of the evidence of this petitioner showing the apportionment, separation and allocation of its properties and business as between sale of gas for resale now sought to be regulated, and the direct sale of gas not subject to regulation in any case; the Commission erred in wholly ignoring and disregarding all of petitioner's said evidence, which error is more specifically assigned hereinafter.

(h) The Commission erred in stating that all that can be accomplished by an allocation of physical properties, can be attained by allocating costs, including the return.

(i) The Commission erred in stating that the cost allocation method is most practicable and business-like, because said method is not practical nor business-like, and such method is contrary to law in that it amounts to the assumption of jurisdiction by the Commission over properties, income and expenses over which it has no jurisdiction by reason of the express terms and exceptions of the Natural Gas Act.

(j) The Commission erred in stating that the Colorado Interstate's evidence is based upon assumptions, without stating what those assumptions were, and the Commission erred in stating that Colorado Interstate's exhibits do not square with realities or are unreasonable or inappropriate in that none of said statements of the Commission is supported by any substantial evidence, but are contrary to the evidence herein.

(k) The Commission erred in stating that the Commission's Staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field, and are widely accepted, in that said statements are not supported by substantial evidence, but are contrary to the evidence in this case.

(l) The Commission erred in not showing what "peak day demand" it refers to, as the basis of the allocation of

fixed costs, and in not showing what it meant by or in not making any finding with respect to fixed costs, and erred in any event in basing its costs allocations on peak day demands for the pre-war year 1939, and in ignoring subsequent operating conditions.

(m) The Commission erred in failing to disclose what it meant by "variable costs" or making any findings with respect thereto, and in stating that such costs vary proportionately to output or volume of sale.

(n) The Commission erred in not recognizing or finding that the costs for the production and transmission of gas depend directly and primarily upon load factors rather than volume.

(o) The Commission erred in allocating its so-called variable costs in proportion to volume of gas purchased by each customer.

(p) The Commission erred in not making a finding as to the amount used by the Commission as fixed costs, and the amounts used as variable costs.

(q) The Commission erred in finding that the principles and methods of costs allocation presented by the Commission's Staff were the most appropriate and reasonable, in that such finding is not supported by substantial evidence, and is contrary to the evidence in this case.

(r) The Commission erred in lumping together the properties, business, revenues and expenses of the respondent with those of Canadian River Gas Company and the Colorado-Wyoming Company as if they were one company, whereas, the evidence shows that they are not, and that their interests in many particulars are adverse; and that they entered into this project and carried on their business as separate entities, with adverse interest.

(s) The Commission erred in lumping together the properties, business, revenues and expense, pertaining to the sale of gas for resale, with those pertaining to direct sale of gas, without regard to the jurisdictional boundary line separating the two businesses, and has attempted to extract from this conglomerate the cost of resale gas, and primarily on a straight volume basis.

(t) The Commission erred, in making such determination of costs and apportionment of such costs, in ignoring the jurisdictional boundary between interstate commerce and intrastate commerce, and has lumped together all the property, business, revenue and expenses pertaining to the intrastate sales in Texas.

(u) The Commission erred in its method by ignoring the fact that the sale of gas for domestic purposes is given priority use of the facilities over the sales for industrial purposes.

(v) The Commission erred in its method of allocation in that the allocation of transmission line costs between capacity costs and volumetric costs has been made in a manner that is arbitrary and discriminatory, in that volumetric costs have been unduly increased and capacity costs unduly decreased, thereby favoring or minimizing the costs charged to resale gas.

(w) The Commission erred in the allocation of transmission line capacity costs, particularly with reference to fixed charges and return on the investment. Failure to make property allocations on which to base return and depreciation charges lead only to incorrect, arbitrary and discriminatory allocations of costs.

(x) The Commission erred in adopting the allocation exhibit of the Commission's staff because the allocation of that portion of transmission line costs alleged to apply to capacity costs has been improperly allocated as between resale and direct sale gas. The percentage distribution used applies only to that portion of the property situated at and immediately north of Bivins Compressing Station, whereas the main line has at least four different ratios that should have been used.

(y) The Commission erred in adoption of the allocation exhibit of the Commission's staff because no weight was given therein to the distance the gas is transported from the field to the several customers and the number of times the gas must be handled or compressed before arriving at its destination.

60.

The Commission erred in its Findings 12 and 13, and in its Opinion in finding that the rates of this petitioner are unreasonable and excessive to the extent of \$2,065,000 per year, and in finding that said rates were or are unreasonable to any extent, and erred in ordering that petitioner's net income be reduced by said amount or by any amount, and in finding that the rates and charges, after reflecting the ordered reductions in net income, would be just and reasonable.

61.

The Commission erred, in any event, in ignoring and misapplying the statutory standard of a "reasonable rate," and erred in attempting to convert its statutory authority to fix such a reasonable rate into a mandate or authority to regulate net income, and in any event in reducing net income for the present by the amount of an alleged excess of net income for the pre-war year 1939.

62.

The Commission erred in refusing to find that the cumulative total of net earnings of respondent from the sale of all gas off the Denver line under its contracts through 1947, after payment of all expenses and taxes, including cost of gas, and after a fair return upon the fair value of its property devoted to such service remaining and available for depreciation and amortization, would be approximately \$13,849,646, and that said sum would be insufficient to amortize or depreciate the accumulated investment through the same period, to-wit, \$15,151,812, by the amount of \$1,302,166, and in refusing to find that such a deficiency would arise under contract prices and under the assumption that levels or trends of expense and revenues existing at the time of the hearing would be maintained, and in refusing to find that such deficiency would be increased, (a) if operating expense, estimated for the future on the basis of a normal trend developed under normal operating conditions in the past, increased by the defense program or war conditions, (b) tax rates above those obtaining in 1940 were enacted into law, and (c) the cost of gas at Clayton Junction increased for the same or other reasons; and

the Commission erred in refusing to find that a substantial deficiency would still result if a rate of return as low as $6\frac{1}{2}\%$ was imposed; and the Commission erred in refusing to find that under increased costs of operations now existing and arising from facts and circumstances developing after the closing of the hearing herein on April 21, 1941, such deficiency would result under a rate of return as low as $6\frac{1}{2}\%$, and even after the inclusion of all of the revenues from the sale of gas by respondent to Natural Gas Pipeline Company of America, at Gray Junction, Oklahoma.

63.

The Commission erred in wholly ignoring and discarding evidence submitted by the petitioner with respect to the apportionment, separation and allocation of the properties and business of the respondent as between sale of gas for resale, now subjected to regulation, and the direct sale of gas not subject to regulation, on two alternative bases, each of which established the reasonableness of the petitioner's present prices for gas, which methods were

1. Showing as to the estimated net earnings from a Denver Line for Resale Gas only.
2. Showing as to the net operating earnings apportioned between Resale Gas and Direct Sale Gas on the Basis of Priority Use of Facilities.

64.

The Commission erred in refusing to find that the cost of the necessary physical properties of the Denver line used and useful for the transmission of gas for resale only was not less, at December 31, 1939 (January 1, 1940) than \$11,412,163, and for each of the subsequent years would be not less than the following:

1941.....	\$11,412,163
1942.....	11,412,163
1943.....	11,637,163
1944.....	11,637,163
1945.....	11,637,163
1946.....	11,637,163
1947.....	11,637,163

65.

The Commission erred in refusing to find that the working capital necessary for the operation of respondent's portion of a Denver line for resale gas only is not less than the following amounts for each of the following years:

1940.....	\$129,000
1941.....	133,000
1942.....	140,000
1943.....	147,000
1944.....	148,000
1945.....	149,000
1946.....	150,000
1947.....	151,000

66.

The Commission erred in refusing to find that the operating expenses, exclusive of the cost of gas and income, capital stock and like taxes, that respondent would incur in the operation of its portion of a Denver line for resale gas only would be not less than the following:

1939.....	\$551,340
1940.....	614,400
1941.....	626,600
1942.....	638,200
1943.....	666,300
1944.....	634,600
1945.....	645,800
1946.....	657,200
1947.....	667,300

and that these expenses are estimated on the basis of a normal trend developed from past normal operating expenses, and would be increased under abnormal conditions arising from the defense program and farther increased by actual war.

67.

The Commission erred in refusing to find that the State and Federal income taxes and the Federal capital stock and like taxes, which would be incurred by the respondent in the operation of its portion of a Denver line for resale

gas only, based on 1940 laws and assuming no increase in the rates above those specified in said acts, are estimated as follows:

1940.....	\$283,925
1941.....	415,398
1942.....	526,327
1943.....	557,172
1944.....	662,557
1945.....	770,633
1946.....	769,038
1947.....	436,808

68.

The Commission erred in refusing to find that the cost of gas to the respondent at Clayton Junction for a Denver line for resale gas only would be:

1939.....	\$ 954,874
1940.....	1,053,001
1941.....	1,016,871
1942.....	959,860
1943.....	1,000,334
1944.....	1,001,626
1945.....	976,811
1946.....	1,020,813
1947.....	1,555,915

69.

The Commission erred in refusing to find that the cumulative total of net earnings of the respondent from its portion of a Denver line for resale gas only, under contract terms, after payment of all taxes and expenses and the allowance of a fair return upon the necessary investment, to the end of 1947, available for depreciation and amortization would be no more than \$1,299,570, whereas the total investment accumulated through that period, and which would have to be thus depreciated or amortized, would be \$14,377,771, resulting in a deficit for such purpose of \$13,078,201; and in refusing to find that if the original cost of such investment was depreciated by the amount of the actual observed depreciation and a fair return was calculated on that sum, and salvage in the highest amount testified to for the whole line was credited, this deficit would still

be more than \$11,700,000, and in refusing to find that the deficit in the last mentioned amount was estimated on the basis of contract prices and on the assumption that levels or trends of expenses and revenues existing at the time of the hearing would be maintained. And refusing to find that such deficit would be increased if operating expenses increased over those estimated for that time, and if tax rates obtaining for 1940 were increased, and if the cost of gas at Clayton Junction was increased for the same or other reasons, and erred in refusing to find that a substantial deficit would still exist if a fair return was limited to 6 1/2%, and would exist if all of the revenues from the sale of gas by respondent to the Natural Gas Company at Gray Junction, Oklahoma, were included, and erred in refusing to find that such a deficit would be further increased by increased operating expenses and taxes occurring after the closing of the hearing on April 21, 1941, evidences to which this petitioner offered to produce but was refused.

.70.

The Commission erred in refusing to find that on the basis of priority use of facilities by the resale gas, a fair apportionment of property and expenses of the respondent's portion of the Denver line is as follows.

	Resale	Direct Sale
Transmission lines	82.51%	17.49%
Clayton and Canyon Compressor Stations	72.80	27.20
Devine Compressor Station	94.40	5.60
All other general property	80.25	19.75
Working capital	79.80	20.20
Contracts with Canadian for the purchase of gas	52.78	47.22
Sales contracts with Public Service Company and with Pueblo Gas and Fuel Company	100.00	0.0
Sales contracts with City of Colorado Springs for its municipal distribution system	78.46	21.54
Operating and maintenance expense of transmission lines	82.51	17.49
General expense and operating taxes	80.25	19.75

and that income taxes and other taxes based on income are fairly apportioned in the ratio of the income.

71.

The Commission erred in refusing to find that the cumulative total of net earnings of the respondent under its contracts, after payment of all taxes and expenses and an allowance of a fair return upon its investment, through 1947, apportioned to resale gas on the basis of the priority use by that gas of the facilities, remaining and applicable to amortization and depreciation would be not more than \$8,930,704, whereas the amount of necessary investment accumulated to that time, and which would have to be so amortized and depreciated, would be \$12,210,637, thus leaving a deficit of at least \$3,279,933; and in refusing to find that if this investment was depreciated by the amount of the actual observed depreciation and a fair return calculated on that reduced basis, and such sum was further credited with the highest amount of salvage testified to for the whole line, to wit, \$131,019.95, such deficit would still be more than \$1,800,000; and in refusing to find that such deficit would arise under contract prices and levels or trends of expenses and revenues existing at the time of the hearing, and that such deficit would be increased if operating expenses increased above those estimated on the basis of trends of expenses existing at the time of the hearing, or if tax rates increased above those obtaining in 1940, or if the cost of gas at Clayton Junction increased for the same or other reasons; and in failing to find that a substantial deficit would still exist even though a rate of return as low as 6½% was imposed and even though net income from the sale of gas to Natural Gas Pipe Line Company of America, at Gray, Oklahoma, was included; and in refusing to find that such deficit would be further increased if the increased operating expenses and taxes arising after the closing of the hearing on April 21, 1941, evidence of which was tendered but refused, were taken into account.

72.

The Commission erred in refusing to find that the present contract prices of respondent are not unjust, unreasonable.

able, unduly discriminatory or preferential, as evidenced by the fact that they are not now yielding and will not in the future, yield to respondent excessive earnings or more than a fair return under said contracts.

73.

The Commission erred in refusing to find that on the assumption that its supply of gas continues through 1956, and on the assumption that the taxpaying electors in Denver and Pueblo renew, in 1948, the franchise of Public Service Company and Pueblo Gas and Fuel, respectively, and on the assumption that such distributing companies then renew contracts for the purchase of gas at the city gates from the respondent, and on the assumption that the City of Colorado Springs likewise renews its purchase contract in 1948 and the other distributing companies, distributing much smaller quantities of gas, also renew their contracts, the amortization and depreciation requirements of the respondent can be spread so that the annual requirements for depreciation of the physical properties of respondent's portion of the Denver line employed in the transportation and sale of all gas will be \$517,266.

74.

The Commission erred in refusing to find that on the basis of the same assumptions made in the preceding Assignment No. 73, the cost of respondent's gas purchase contract with Canadian, for all gas delivered to the Denver line at Clayton Junction, depleted to December 31, 1938, in proportion to the depletion of the gas reserves, and in the amount of \$1,229,800, will require an annual amortization expense, on a sinking fund basis with interest at $2\frac{3}{4}\%$, compounded annually, to the end of 1956, in the amount of \$53,718.

75.

The Commission erred in refusing to find that the cost of respondent's sales contract with Public Service, Pueblo

Gas and Fuel, and the City of Colorado Springs will require an amortization allowance of \$29,388 per annum to amortize them to the dates of their expiration in 1948; and any additional consideration paid by respondent for the renewal of any such contracts in 1948 will require additional amortization expense to the end of their respective lives.

76.

The Commission erred in refusing to find that under the assumption that the respondent continues in business through 1956, as aforesaid, the cost of all gas delivered to it at Clayton Junction would be as follows:

1939.....	\$1,339,860
1940.....	1,534,753
1941.....	1,591,487
1942.....	1,542,645
1943.....	1,607,229
1944.....	1,636,617
1945.....	1,662,940
1946.....	1,813,724
1947.....	2,683,891

77.

The Commission erred in refusing to find that under the assumption that the Respondent remains in business through 1956, as aforesaid, and that tax rates contained in 1940 laws are not increased, the state and federal income taxes and the federal capital stock and related taxes would be as follows:

1939.....	\$311,501
1940.....	429,109
1941.....	539,394
1942.....	652,606
1943.....	651,590
1944.....	749,981
1945.....	836,214
1946.....	794,365
1947.....	395,986

The Commission erred in refusing to find that the balance net earnings of Respondent from its sale of all gas off the Denver line, after allowing for an 8% return, would be as follows:

1939.....	\$423,241
1940.....	264,718
1941.....	400,155
1942.....	467,590
1943.....	428,701
1944.....	468,968
1945.....	501,133
1946.....	379,418
1947.....	103,750*

*Deficit.

and that this balance reflects the profits from the sale of direct sale gas and depends (a) upon the present contract prices, (b) upon the maintenance of present levels or trends of sales and revenues, (c) on the assumption that normal operating expenses trended into the future on the basis of past normal expenses will not be increased due to defense measures or actual war conditions, (d) upon taxes calculated at 1940 rates and on the assumption that such rates will not be increased, and (e) upon the Company's being able to remain in business and amortize and depreciate its property over the longer period and in the smaller annual amounts as shown in the preceding specifications of error; and the Commission further erred in failing to find that even with the inclusion of the net revenues from the sale of gas to Natural Gas Pipe Line Company of America, at Gray, Oklahoma, but including the increased operating expenses and taxes which have been incurred, evidence of which was tendered but refused, the balance net earning would not yield more than 6 1/2% return and the prices now being charged by respondent would not be unreasonable.

79.

The Commission erred in refusing to find that on the assumption that the respondent could remain in business through 1956 its net earnings from a line sufficient to transport resale gas only would not, after paying all expenses, including depreciation and amortization, be sufficient in any year to allow an 8% return upon the necessary investment, such deficits being as follows:

1939.....	\$328,164
1940.....	526,456
1941.....	364,263
1942.....	214,415
1943.....	208,126
1944.....	111,561
1945.....	12,712
1946.....	196,510
1947.....	1,160,917

and that these annual deficiencies below the amount required to give an 8% return on the fair value of the property devoted to resale gas only, are based on present contract prices and would be increased by an increase in the expenses of the respondent for any of the causes stated in the Assignment of Error next preceding; and the Commission further erred in failing to find that even with the inclusion of the net revenue from the sale of gas to Natural Gas Pipe Line Company of America, at Gray, Oklahoma, but including the increased operating expenses and taxes which have been sustained, evidence of which was tendered but refused, such net income would not be sufficient to yield 6½% return and the present prices for the sale of gas are not unreasonable.

80.

The Commission erred in failing to find that on the assumption that the respondent can remain in business through 1956, its net earnings, after payment of all expenses, including depreciation and amortization, and after an allowance of 8% return on the present fair value of the property devoted to the service, all apportioned to resale gas on the basis of priority use of facilities of that gas, would be as follows:

1939.....	\$102,140
1940.....	117,858
1941.....	165,130
1942.....	219,453
1943.....	211,234
1944.....	250,679
1945.....	285,824
1946.....	218,584
1947.....	79,030*

*Deficit.

and that the average balance for the period shown is \$166,000 per annum; and that this balance depends (a) upon the present contract prices and maintenance of present levels or trends of sales and revenues, (b) on the assumption that the present cost of gas at Clayton Junction, likewise apportioned, will not increase, (c) on the assumption that operating expenses which have been trended into the future on the basis of a normal trend developed in past normal times, will not be increased because of the defense program or war conditions, (d) on the assumption that the federal and state income taxes and the capital stock and related taxes, and other local and general taxes will not increase above the rates and levels of 1940, and (e) on the assumption the respondent's markets continue through 1956 and its depreciation and amortization expense, spread over that term and thereby reduced in annual amounts, would not have to be increased because of an earlier termination of respondent's business for any cause; and the Commission further erred in failing to find that even with the inclusion of the net income from the sale of gas to Natural Gas Pipe Line Company, at Gray, Oklahoma, but by including the increased operating expenses and increased taxes which have been incurred, evidence of which was tendered but refused, such net earnings would not exceed 61½% per annum and the present prices for the sale of gas would not be unreasonable.

81.

The Commission erred in refusing to find that the cost of all gas to the respondent at Clayton Junction, based on

the prevailing market value of gas at Bivins plus transmission cost to Clayton Junction, would be as follows:

1939.....	\$1,891,022
1940.....	2,043,286
1941.....	2,176,464
1942.....	2,211,063
1943.....	2,293,108
1944.....	2,355,481
1945.....	2,415,251
1946.....	2,447,015
1947.....	2,486,168

82.

The Commission erred in refusing to find that the net earnings of the respondent from the sale of all gas off the Denver line, after payment of all expenses, including amortization and depreciation and the cost of gas on the basis stated in the Assignment of Error next preceding, and after an 8% return on the fair value of its property, would be

1939.....	\$ 32,833
1940.....	56,146*
1941.....	62,144
1942.....	128,246
1943.....	76,049
1944.....	146,460
1945.....	201,253
1946.....	144,795
1947.....	40,859

*Deficit.

and that for all these years the average annual balance would be \$86,307, and that this balance depends upon the same conditions and assumptions made in the two preceding Assignments of Error; and the Commission further erred in failing to find that even with the inclusion of the net earnings from the sale of gas to the Natural Gas Pipe Line Company of America, at Gray, Oklahoma, but including the increased operating expenses and taxes which have been incurred, evidence of which was tendered but refused,

the earnings would not yield more than 6½% return and the present prices for the sale of gas would not be unreasonable.

83.

The Commission erred in making each of its findings, numbered 1 to 14, inclusive, in that none of said findings is supported by substantial evidence, and each of said findings is contrary to the evidence in this case.

84.

The Commission erred in making each of its orders, lettered (A) to (E), inclusive, in that each of said orders is contrary to law and the evidence in this case.

85.

The Commission erred in refusing to find that the present contract prices of the Respondent are not "unjust, unreasonable, unduly discriminatory or preferential."

86.

The Commission erred in making its findings and order herein, in that said findings and order are contrary to the terms of the Natural Gas Act and deprive this petitioner of its rights under the Fifth Amendment to the Constitution of the United States.

87.

The Commission erred in failing to make the preliminary, primary and basic findings necessary to support its ultimate findings and conclusions and erred in failing to disclose the methods and principles used by it and the computations made by it in arriving at its ultimate findings and conclusions. In an attempt to ascertain the basis on which the Commission had proceeded, this respondent did on March 30, 1940, cause a telegram to be sent to the Commission, reading as follows:

"In making study of Opinion No. 73 in Canadian River and Colorado Interstate Gas Company rate case find it difficult to check various figures against exhibits and also are unable to check various computations made which are based on findings of Commission not reflected in exhibits in order to thoroughly digest and understand all computations it will be necessary to confer with your representa-

tive and examine working papers that were used in making computations. Would like to do this this week, Wednesday or Thursday. Appreciate immediate reply."

On April 1, 1942, the Commission did deny the request contained in the above quoted telegram, said denial being as follows:

"The requests contained in your telegram of March 30, 1942, re Opinion No. 73 in matter of Canadian River Gas Company and Colorado Interstate Gas Company have been considered and are denied."

To the extent that this petitioner has not been able to specify with more particularity the errors of the Commission, such inability is due to the failure of the Commission to disclose by its findings and opinion the methods, principles and computations employed by it in arriving at its ultimate conclusions and findings. In failing to make proper findings, in failing to disclose thereby the methods and principles employed by it and in failing to grant petitioner's request for such additional findings and such disclosure of the methods, principles and computations used by the Commission, this petitioner has been further deprived of its rights under the Natural Gas Act and under the Constitution of the United States.

Respectfully submitted this 9th day of April, 1942.

COLORADO INTERSTATE GAS COMPANY,

By WILLIAM A. DOUGHERTY,

Vice President.

30 Rockefeller Plaza, Room 3000,
New York, New York.

WILLIAM A. DOUGHERTY,

C. W. COOPER, D

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[Verification and certificate of service omitted.]

Filed March 11, 1942.

Petition of Canadian River Gas Company for
Rehearing and to Reopen.

Now Comes Canadian River Gas Company, one of the Defendants-Respondents in the above-entitled and numbered causes, hereinafter sometimes referred to as Petitioner and sometimes as Canadian, and referring to Canadian's requested "Findings of Fact" heretofore filed herein and to this Commission's "Order Reducing Rates," dated March 18, 1942, and this Commission's Opinion No. 73 incorporated by reference in said Order, and to Canadian's Petition, dated March 10, 1942, to reopen the above-entitled proceedings to take further evidence, and respectfully applies for a rehearing in the above-entitled causes upon each and all of the grounds set forth in the following Specifications of Errors.

Specifications of Errors.

1.

Without waiving but still insisting upon each and all of the Specifications of Errors following this specification, and without waiving but still insisting upon its pleas, objections and contentions as to the jurisdiction of the Commission over Canadian, it is respectfully submitted the Commission erred in denying Canadian's petition, dated March 10, 1942, to reopen the above-entitled proceedings to take further evidence. The Commission states on page 3 of its Opinion that the granting of said Petition was opposed by the Mayor of the City and County of Denver by letter and by the Wyoming Public Service Commission by telegram. No copy of such letter or telegram has been served upon Canadian. The Commission's statement on page 3 of its Opinion that it is fully aware of recent trends in costs is not supported by any evidence in this case. The Commission's statement on page 3 of its Opinion that it is also aware of recent trends in revenues is not supported by any evidence in this case. The statement on page 3 of the Opinion that the Commission has given due consideration to the above factors in the orders entered in these proceedings indicates that the Commission has based its findings and orders upon alleged facts and matters not appearing in the record. The statement on page 39 of the Opinion that the Commission is aware of substantial increase in natural gas sales due

to the country's war efforts, the statement on page 40 that in the natural-gas industry operating labor and materials are a comparatively small part of the total costs, the statement on page 40 of the Opinion that all factors considered, it may reasonably be expected that revenues will increase as rapidly, if not more rapidly, than costs of Canadian, the statement on page 40 that for the purposes of the Commission's order, 1939's revenues and costs are representative of the relationship that will exist between these items in the immediate future, and the statement on page 40 of the Opinion that the use of 1939 figures undoubtedly resolves most of the doubts as to future operation conditions in favor of the companies, and each of said statements, are not supported by any evidence in the case. Even though it be assumed that the observations and statements of the Commission be generally true as to the gas industry as a whole, nevertheless, the application of such observations to Canadian and its business is not supported by any evidence in the record. The Commission's findings and orders are based upon facts found to exist in the pre-war year of 1939, whereas it is a matter of common knowledge, which the Commission in its Opinion has recognized, that pre-war conditions and facts do not now prevail and will not prevail during the war period, and for an indefinite period thereafter. The basis of the Commission for said observations and statements is not set forth at any place in its Opinion or Order. Canadian's Petition to Reopen is hereby renewed upon each and all of the grounds set forth therein.

2.

Even assuming that Canadian is a natural gas company within the meaning of the Natural Gas Act and subject to the jurisdiction of the Commission for certain purposes, the Commission, nevertheless, erred in finding and ruling that it has rate-regulatory jurisdiction over Canadian's production and gathering properties, facilities and business and in its attempted exercise of such jurisdiction in this case.

Canadian's production and gathering business is local in character, has not been declared to be and is not "affected with a public interest," and is not interstate in character, and the Natural Gas Act itself provides that it shall not be applicable to such production and gathering.

The Commission's rate-regulatory jurisdiction at the most extends only to the transportation of natural gas in interstate commerce and to the sale in interstate commerce of natural gas for resale for ultimate public consumption, and therefore the Commission erred in each and all of its findings, rulings and orders in so far as they relate to, and include Canadian's production and gathering properties, facilities, operations and business.

The statement or finding on page 11 of the Opinion that Canadian's production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce, is not supported by substantial evidence.

The statement or finding on page 11 of the Opinion that Canadian's operations are an integral part of the operations of Colorado Interstate Gas Company, hereinafter sometimes referred to as Colorado, and that the two comprise a single operating system is not supported by substantial evidence.

The statement or finding on page 11 of the Opinion that the investigation of Canadian's production and gathering property and operations is indispensable in regulating Canadian's rates and charges for the sale of natural gas in interstate commerce for resale and for the transportation of natural gas in interstate commerce is not supported by substantial evidence.

Each of said statements and findings on page 11 of the Opinion, even if true, is immaterial and forms no basis or justification for an assumption of jurisdiction by the Commission for rate-making purposes over Canadian's production and gathering properties, facilities, operations and business, which is expressly negated and withheld in and by the Natural Gas Act.

3.

The Commission erred in ordering a change in the price of gas provided to be paid Canadian by Colorado under the contract of January 3, 1928, between Canadian and Colorado.

4.

The Commission erred in not finding and ruling that

neither Canadian's contract with Colorado of January 3, 1928, nor the price of gas provided therein to be paid in subject to change by the Commission prior to the expiration of its term.

5.

The Commission erred in not finding that Canadian's contract of January 3, 1928, with Colorado was the result of prolonged arm's length private negotiations and individual bargaining between adverse parties.

6.

Said contract of January 3, 1928, between Canadian and Colorado obligates Canadian, among other things, to own, maintain and develop gas lands and leasehold or other interests therein and to develop, drill for, produce and gather gas therefrom. Certain quantities of the gas so produced and gathered Canadian is then obligated to transport and deliver to Colorado under said contract. The so-called purchase price to be paid Canadian under said contract of January 3, 1928, computed on the cost basis in said contract provided is the agreed compensation to Canadian for the performance of all its obligations under said contract.

Irrespective of any general jurisdiction which the Commission might have to change the price of gas to be paid under contracts executed prior to the effective date of the Natural Gas Act, such jurisdiction does not extend to changing the compensation to be paid Canadian for the performance of its obligations under said contract of January 3, 1928, with Colorado relating to the acquisition and holding of gas lands and the drilling and development thereof and the production and gathering of gas therefrom. The necessary effect of the Commission's findings and orders in this case is an attempted extension of any jurisdiction it may have to matters not within its jurisdiction and to production and gathering, over which jurisdiction has been expressly withheld by the Natural Gas Act. This Commission, therefore, has clearly erred in changing the amount of compensation provided to be paid Canadian by Colorado under the contract of January 3, 1928, insofar in any event as such compensation includes compensation for the performance of obligations relating to production and gathering

and other obligations not within the jurisdiction of the Commission.

7.

Canadian's contract with Colorado of January 3, 1928, was entered into and was substantially performed long prior to the adoption of the Natural Gas Act, and under such circumstances the Commission is without power to change any of the terms, provisions or prices as specified in such contract during the life thereof, and its action in this case in so doing is error.

8.

Even if it be assumed or held that the Commission has jurisdiction and power to change the price of gas provided to be paid under a contract negotiated, executed and substantially performed long prior to the adoption of the Natural Gas Act, and even if it be assumed that such power to change or modify the terms of a contract extends to a contract relating to production and gathering, the action of the Commission under the facts appearing in the record in this case in changing the price to be paid by Colorado to Canadian for gas delivered by Canadian to Colorado under said contract is unfair, unreasonable, capricious and arbitrary. As the evidence shows, under said contract Canadian cannot possibly make a profit from its operations, all the benefits of its operations being passed on to Colorado. It is entitled to receive only its actual costs including an amount sufficient to amortize the principal and interest of its bonded indebtedness held by Colorado during the life of the contract. To deprive Canadian of any part of such payments provided to be made under such contract must necessarily make it impossible for Canadian to pay its principal and interest on its bonds or to perform its other obligations under said contract necessary to produce and gather the gas which it has contracted to sell to Colorado. The necessary effect of such action will be to deprive Canadian of a substantial part of the consideration which induced it to enter into said contract and to render Canadian unable to pay principal or interest on its 6% bonds which as shown by the evidence as of December 31, 1939, were outstanding in the principal sum of \$5,057,000, with possibility or probability of foreclosure of Canadian's properties under the trust deed securing said bonds as a result of the

default which will be forced by changing the amount of the payment which Colorado by the terms of said contract is obligated to make to Canadian. In addition to this outstanding bonded indebtedness as of December 31, 1939, Canadian was indebted to Colorado, at said time in the amount of \$1,384,254.14 on 6% notes sold from time to time at par for cash to finance Canadian's construction. Enforcement of the Commission's order will not only affect Canadian but also Colorado and will endanger the whole service to the ultimate consumers.

The enforcement of any order changing the contract price to be paid Canadian for its gas sold and delivered to Colorado under said contract will deprive Canadian of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

9.

In its consideration of a proper rate base the Commission erred in rejecting Canadian's estimates of reproduction cost new less observed depreciation (Op., p. 13).

10.

The Commission has erred in failing to make any preliminary or basic findings on which it bases its ultimate finding of the undepreciated cost of Canadian's gas plant as of December 31, 1939, to be \$10,784,464. It is impossible for Canadian, from its said Order reducing rates of March 18, 1942, or from its Opinion No. 73 incorporated therein, to determine the different values of the various properties of Canadian used by the Commission in making up its aggregate of \$10,784,464 found to be the undepreciated cost of Canadian's gas plant as of December 31, 1939. Because thereof it is impossible for Canadian to make the specific objections in this Petition for Rehearing to the individual items used by the Commission in determining said original cost, which objections Canadian would have the opportunity to make if the Commission had made proper preliminary and basic findings showing how it arrived at its ultimate finding of original cost as of December 31, 1939. The failure of the Commission to make such proper preliminary and basic findings deprives Canadian of due process of law in

violation of the Fifth Amendment to the Constitution of the United States.

11.

The Commission erred in not limiting its findings as to original cost to Canadian's properties used in the transportation of natural gas in interstate commerce and to the sale in interstate commerce of natural gas for resale for ultimate public consumption, and in including Canadian's production and gathering properties and facilities.

12.

The Commission erred in finding the undepreciated original cost of Canadian's property (Op., p. 14 and Finding No. 4) as of December 31, 1939, to be \$10,784,464. The Commission's finding to that effect is not supported by substantial evidence.

13.

The Commission erred (Op., p. 15) in deducting from and not including in original cost of Canadian's properties the item of \$129,032 which the Commission has deducted upon the ground that said item represents reaccounting and not a correction of an accounting error. The finding of the Commission that the placing of said sum by Canadian in its capital account represents reaccounting, and not correction of an accounting error is not supported by substantial evidence. The Commission erred in not finding that said sum is properly placed in capital as a part of the actual legitimate cost of Canadian's property. The Commission further erred in eliminating all that part of this item which relates to the production and gathering properties of Canadian.

14.

The Commission erred in deducting from and not including in original cost of Canadian's properties as of December 31, 1939 (Op., p. 15) the item of \$3,370,817.

15.

The Commission erred in not properly or adequately setting up the facts appearing in the record showing the circumstances under which the item of \$5,000,000 was paid by Canadian to Amarillo Oil Company for certain gas leaseholds and wells, and in not finding the following, namely:

That when Canadian acquired its original gas leaseholds and wells from Amarillo Oil Company as of May 1, 1927, it actually paid therefor the sum of \$5,000,000 in cash, which sum was actually advanced by Standard Oil Company (N. J.) pursuant to a contract, dated April 5, 1927, between Standard Oil Company (N. J.), Southwestern Development Company, and Cities Service Company; that the contract of April 5, 1927, between Standard Oil Company (N. J.), Southwestern Development Company, and Cities Service Company, pursuant to which Standard Oil Company (N. J.) advanced to Canadian the sum of \$5,000,000 which Canadian used to purchase gas leaseholds and wells from Amarillo Oil Company, was executed only as the result of prolonged arm's-length negotiations and individual bargaining between adverse parties, Standard Oil Company (N. J.) and Southwestern Development Company; that said transaction was not the ordinary inter-company transaction between affiliated companies and should not be so treated, because, first, its terms were negotiated at arm's length and agreed upon by adverse parties; second, it was not a book transaction, since the purchase price was actually advanced and paid in dollars by a company which was outside the Southwestern's holding company system; third, no contingency whatever could arise in the future which would affect the right of Amarillo Oil Company to keep and retain the full purchase price; and fourth, under these circumstances all accepted rules of accounting require that the full purchase price paid by Canadian be treated as its cost. Said full sum of \$5,000,000 was actually invested in and went into this project. It was new money and came from an entirely outside source. To secure this \$5,000,000, plus an additional \$6,000,000, it was necessary for Canadian to issue its \$11,000,000 of bonds. The payment of this \$5,000,000 of new money was an essential to the inauguration and consummation of the project. The transaction was actual, bona fide, complete and final between the parties. The Commission erred in not making findings in accordance with each and all of the above statements. The Commission erred in not finding that said entire sum of \$5,000,000 constituted part of Canadian's original cost, and in eliminating the sum of \$3,127,496 therefrom, and in finding that said sum constituted a write-up.

16.

The Commission erred in basing its elimination of the \$3,127,496 upon the express or implied finding or assumption that the gas leaseholds and wells purchased with the \$5,000,000 had prior to the time of such purchase been devoted to a public service and in not finding that in any event said properties had not been devoted to any public service until after the same had been purchased by Canadian.

17.

The Commission erred in not finding that the full \$5,000,000 paid by Canadian to Amarillo Oil Company for said original leaseholds and wells was a fair and reasonable price therefor, and in finding that said entire sum should not be included in Canadian's original cost.

18.

The Commission erred (Op., pp. 15-16) in deducting from and not including in Canadian's original cost the sum of \$121,787, and finding that this item represents a profit among affiliated companies.

19.

The Commission erred in finding that the Master Oil and Gas Company property had been devoted to a public service before the time Canadian acquired it.

20.

The Commission erred in not finding that the sale by Master Oil and Gas Company to Canadian was negotiated at arm's length, that the purchase price was not exorbitant or in anywise unreasonable, and that the full purchase price for said property should be considered as part of Canadian's original cost.

21.

The Commission erred in deducting from and not including in Canadian's original cost (Op., pp. 15-16) the item of \$128,534 upon the alleged ground that said payment constitutes a write-up and represents a price paid for properties not at arm's length which exceeded the original cost to the party first devoting them to the public service. Said finding (Op., p. 17) is not supported by any substantial evidence.

22.

With reference to the transaction referred to in Specification No. 21, the Commission erred in not making any preliminary or basic findings of fact showing the items making up said aggregate item of \$128,534 so that Canadian could properly direct specification of errors to the elimination of the different items aggregating said sum of \$128,534.

23.

If, as Canadian believes, there is included in this elimination of \$128,534 the sum of \$51,839.04 representing the cost of the drilling of an exploratory well (Bivins 2) over 20 years ago which resulted in a dry hole, then the Commission erred in making such elimination.

24.

If, as Canadian believes, the remaining portion of said sum of \$128,534 eliminated by the Commission from Canadian's original cost, namely, the sum of \$76,695, is eliminated by the Commission upon the ground that it represents an excess of original cost to the party first devoting the property to the public service, then the Commission erred in that said conclusion is not based upon any adequate finding and is not based upon substantial evidence in the record, and is contrary to law. The Commission erred in not finding that said purchase was made prior to the time that the property so purchased could possibly be said to have been first devoted to the public service, and the Commission erred in not finding that said sum is reflected in a sum actually paid by Canadian to Amarillo Oil Company for the property.

25.

The Commission erred in deducting from and not including in Canadian's original cost (Op., pp. 15-17) the item of \$366,507 representing interest during construction.

26.

The Commission erred in not setting forth and making sufficient preliminary or basic facts showing just what interest during construction from Canadian's books has been

eliminated so that Canadian can properly direct specification of errors thereto.

27.

The Commission erred (Op., p. 18) in finding that any part of said sum of \$366,507 eliminated by the Commission from Canadian's original cost represents interest upon "write-ups." The Commission's finding to that effect (Op., pp. 17-18) is not supported by substantial evidence.

28.

The Commission erred in finding that Canadian's construction period ended on July 1, 1928 for the purpose of computation and allowances of "interest during construction."

29.

The Commission erred in not finding that Canadian's construction period, for the purpose of the computation and allowance of "interest during construction," should not end before October 31, 1928.

30.

The Commission erred in not finding that the sum of \$366,507 represents interest actually paid by Canadian during the period from May 1, 1927 to October 31, 1928.

31.

The Commission erred in not finding that the original cost of Canadian's properties for its production and gathering facilities as of December 31, 1939 is not less than the sum of \$10,620,625.

32.

The Commission erred in not finding that the original cost of Canadian's transmission system properties as of December 31, 1939 is not less than the sum of \$4,028,196.

33.

The Commission erred (Op., pp. 24-27) in ignoring and rejecting observed per cent condition of Canadian's depreciable property in determining the existing depreciation in said property as of December 31, 1939.

34.

The Commission erred in not finding from the uncontradicted evidence in this case that, based upon actual observation and inspection of the present condition of Canadian's depreciable property, the percentage of accumulated depreciation and the percentage of condition of the depreciable properties of Canadian were, as of December 31, 1938, as set forth in Canadian's request for Finding of Fact No. 82 heretofore filed with this Commission as follows:

Description	Accumulated Depreciation Per Cent	Condition of Prop- erties Per. Cent
Land	0%	100%
Right of Ways	0%	100%
Drilling and Cleaning Equipment	0%	100%
Field Measuring Station Structures	17%	83%
Measuring Station Equipment (Field and Transmission)	11%	89%
Field Lines	7%	93%
Field Compressor Station Structures	18%	82%
Field Compressor Station Equipment	16%	84%
General Property	22%	78%
Compressor Station Structures	10%	90%
Compressor Station Equipment	17%	83%
Transmission Line Equipment	7%	93%
Other Transmission System Structures	19%	81%
Other Transmission System Equipment	18%	82%
Measuring Station Structures (Transmission)	14%	89%
Gasoline Plant Structures	15%	85%
Gasoline Plant Equipment	27%	73%
Telephone System Equipment	16%	84%

35.

The Commission erred in not applying the percentages of depreciation set forth in the next preceding specification to Canadian's depreciation base.

36.

As stated by the Commission in that portion of its opinion under the heading "Gas Reserves" (Op., pp. 27-33) the

Commission witnesses based their testimony as to reserves upon the "pressure decline" method, whereas Canadian's witnesses based their testimony upon the "porosity and thickness" method or "open flow" method. The Commission states in its opinion (Op., pp. 28-29) that the estimates of Commission staff, resulting from an application of the "pressure decline" method are too high and that Canadian's estimates, based upon applications of the "porosity and thickness" or "open flow" methods, are too low, thereby condemning all methods as applied to the Texas Panhandle Field and rejecting the estimates both of Commission staff witnesses and Canadian's witnesses. Notwithstanding this, the Commission has made a purported finding as to Canadian's recoverable reserves. It is obvious that such finding is necessarily the arbitrary conclusion only of the Commission and is not supported by any substantial evidence in the case. The Commission erred in not basing its finding upon any evidence in the case and in making the finding that Canadian's recoverable reserves as of December 31, 1939, were 2,800,000,000 Mcf at 14.65 pound pressure base and at an assumed abandonment pressure of 50 pounds (Op., p. 31).

37.

The Commission erred in holding that the method used by the Commission staff in dividing the entire field into quadrants favored the position of Canadian as to lower reserves, there being absolutely no substantial testimony to this effect and this finding, therefore, is a mere conclusion not even remotely supported by the record (Op., p. 30).

38.

The Commission erred in making the statement that the method used by Commission staff of dividing the entire field into quadrants favored the position of Canadian as to lower reserves and in stating in effect that this was true because (1) Canadian's acreage is "considered among the very best in the entire field" (Op., p. 30), and (2) that the Commission staff had arrived "at an average of 15,400 Mcf of remaining reserves per acre (for the field as a whole) as compared with only 11,600 Mcf of remaining reserves per acre under Canadian's acreage" (Op., p. 30). These find-

ings are erroneous and are not supported by the record because the only testimony on these questions by the Commission staff shows an estimate for Canadian's reserves of 16,343 Mcf per acre, which is considerably higher than the estimate per acre for the field as a whole (see Hammer's Exhibit 180, page 4 of 4), and for the further reason that there is no substantial evidence whatsoever in the record to the effect that Canadian's acreage is among the most productive in the field, the evidence on this subject being merely that it is well blocked and among the most desirable acreage for this reason.

39.

The Commission erred in holding that "the pressure decline method, theoretically, automatically accounts for any migration" (Op., p. 30) for the reason that there is no substantial evidence in the record to support any such finding with respect to migration that may occur in the future. It is undisputed in this record that the life of any acreage is determined by production and drainage in the future, and past drainage in any event has very little bearing upon this fact after the gas in place has been determined.

40.

The Commission erred in its finding that "if iso-baric maps are properly drawn this factor (drainage) is accounted for" (Op., p. 30) because there is absolutely no evidence in the record to support the statement that iso-baric maps represent in any manner the drainage that may occur in the future.

41.

The Commission erred in failing to find that Canadian would lose proportionately more gas in the future from drainage than it had lost in the past, for the reason that the uncontradicted testimony in this case demonstrated that this would be true because of the increased rate of production from lands adjacent to the acreage of Canadian coupled with the fact that the record shows without contradiction and based upon figures and studies furnished by Commission staff that it was not until midyear 1938 that adjacent acreage had produced as much gas in volume as Canadian's acreage and, further, that during the last year covered by

the study of Commission staff only about half as much gas was produced from Canadian's acreage for each acre pound lost in pressure as was produced for each acre pound lost in pressure during the first year covered by the study of Commission staff. The record is clear and uncontradicted in this respect.

42.

The Commission erred in its finding that the life of Canadian's reserves would continue for 53 years from December 31, 1939 (Op., p. 31), because there is no substantial evidence that will support such finding.

43.

The Commission erred in the determination of the life of Canadian's reserves by merely dividing its expected future annual rate of production into remaining recoverable reserves as found by it (Op., p. 31) because such method of computation necessarily assumes, in spite of the uncontradicted testimony to the contrary, that Canadian will produce every foot of gas found by the Commission to remain in place under its acreage as of the date of the computation, notwithstanding the fact that there is no substantial evidence to support this assumption, but on the contrary, the uncontradicted evidence in this case demonstrated that a computation of this character, which did not take the drainage into account, would give an erroneous answer.

44.

The Commission erred in its finding that the life of Canadian's reserves would be influenced by the life of the Hugoton Field (Op., p. 32), for the reason that the evidence shows affirmatively and without contradiction that Canadian has no reserves in the Hugoton Field and there is no showing that it is possible for Canadian either to acquire reserves in that field or purchase gas therein and finally, even if Canadian could rely upon the Hugoton Field as a source of supply it would be necessary for it to make large additional capital expenditures, none of which are provided for in the rate base or anticipated by the Commission with respect to Canadian's future operations.

45.

The Commission erred in not considering the influence of drainage upon the life of Canadian's reserves because the overwhelming weight of the testimony shows that Canadian will lose far more gas by drainage than it will actually produce through its wells, there being no substantial evidence to the contrary.

46.

The Commission erred in failing to find that the life of Canadian's reserves depended upon and would be the same as the life of the field as a whole, this being the testimony of all of the witnesses who testified concerning this matter and there being no substantial evidence to the contrary, all of the testimony being that the Texas Panhandle Field is interconnected by means of porous spaces and that production of gas from any point in the reservoir will affect the entire reservoir, and all of the witnesses also testified to the fundamental law of physics that gas under pressure will migrate from areas of higher pressure to areas of lower pressure in the process of equalization of pressures.

47.

The Commission erred in failing to make any finding as to the total recoverable reserves of the Texas Panhandle Gas Field and to recognize the necessity for such finding in order to arrive at a proper finding of the remaining life of Canadian's recoverable reserves.

48.

The Commission erred in failing to find the remaining life of the Texas Panhandle Field as a whole.

49.

The Commission erred in failing to find that the total volume of gas in place originally in the Texas Panhandle Field did not exceed 19,661,265,912 Mcf computed on a 16.4 pound pressure base to 0 pounds gauge well-head abandonment pressure.

50.

The Commission erred in failing to find that the total

volume of gas in place originally in the Texas Panhandle Field computed to a 50 pound gauge well-head abandonment pressure did not exceed 17,381,014,589 Mcf.

51.

The Commission erred in failing to find that there had been produced from the Texas Panhandle Field from the beginning of production to January 1, 1941, a total of 8,325,985,366 Mcf. of gas computed on a 16.4 pound pressure base.

52.

The Commission erred in failing to find that from January 1, 1941, to the end of 1956, there will be withdrawn from the Texas Panhandle Field a total of 9,055,029,223 Mcf of gas computed on a 16.4 pound pressure base, and that at that time the average pressures in the field would not exceed 50 pounds gauge at the well-head.

53.

The Commission erred in failing to find that the remaining life of the Texas Panhandle Gas Field as a source of supply for long distance pipe lines will not extend beyond the end of 1956.

54.

The Commission erred in failing to find that the remaining life of Canadian's reserves as a source of supply for long distance pipe lines will not extend beyond the end of 1956, there being no substantial evidence to the contrary.

55.

The Commission erred in failing to find that the determination of average pressures in the Texas Panhandle Field by weighting on acreage alone does not give the correct equilibrium pressure, all of the substantial testimony in this case being to this effect.

56.

The Commission erred in failing to find that the pressure decline method of estimating gas reserves in the Texas Panhandle Field gives an erroneously high answer in the absence of the true equilibrium pressure, all of the substantial testimony in the case being to this effect.

57.

The Commission erred in failing to find that the average pressure in the Texas Panhandle Field, determined by weighting on acreage alone, shows an accelerated drop in pressure from year to year as related to production, all of the substantial testimony in the case being to this effect.

58

The Commission erred in failing to find that the average pressure of Canadian's reserves, determined by weighting on acreage alone, shows an accelerated drop in pressure from year to year as related to production, all of the substantial evidence being to this effect.

59.

The Commission erred in failing to find that any estimate of reserves in the Texas Panhandle Field, based upon the pressure decline method, is erroneously high, when the accelerated drop in pressure from year to year, as related to production, is ignored, the overwhelming weight of the testimony being to this effect and any contrary testimony, by inference or otherwise, is directly in conflict with the fundamental law of physics known as Boyle's Law.

60.

The Commission erred in applying the pressure decline method to Canadian's acreage in any event for the purpose of determining the remaining recoverable reserves in place in view of its finding in this case to the effect that the pressure decline method of estimating reserves is satisfactory when "a field is depleted as much as 15% or more" (Op., p. 29), all of the testimony in this case being to the effect that at the time of the hearing and at the time the estimates of reserves were made Canadian's reserves had been depleted less than 10%.

61.

The Commission erred in finding the accrued depreciation as of December 31, 1939, on Canadian's depreciable property to be \$1,480,948.

62.

The Commission erred, under the facts and circumstances appearing in this case in using the service life principle for the purpose of determining annual depreciation expense.

63.

The Commission erred (Op. pp. 33-34) in not stating and finding what service lives it has used in applying the service life principle to annual depreciation expense. It is impossible, from Commission's Opinion, for Canadian to know what service lives have been used so that it can properly direct Specifications of Error thereto.

64.

The Commission erred under the facts and circumstances appearing in this case in using the service life principle for the purpose of determining future annual depreciation expense, which principle, as applied by the Commission, erroneously assumes that the allowance which was approximately 2% per annum on depreciable items when applied up to the very date that the property is exhausted and theoretically will go out of service will return the full investment in the property. This does not square with the realities. The property cannot be operated to the very date of exhaustion without the expenditure of large sums of money for the purpose of making replacements, betterments and rehabilitations of the property before the date of total exhaustion has been reached. The Commission has made no provision for these actualities, and in failing to do so, committed error.

65.

The Commission erred in not determining and finding the depreciation period for the amortization of Canadian's investment to end in the year 1947, and that it should be permitted to amortize its investment during the period commencing 1939, or such later commencement date as should be properly used in establishing the depreciation base, and ending in the year 1947, inasmuch as the primary term of Canadian's contract with Colorado expires in 1947, and the franchise with the Public Service Company of Colorado in Denver, terminates in the year 1947.

66.

In any event the Commission erred in not finding that the longest period which should properly be used for the amortization of Canadian's investment is the 18-year period starting in 1939 and terminating at the end of the year 1956.

67.

The Commission erred in finding that the accrued depletion of Canadian's properties as of December 31, 1939, is the sum of \$653,681.

68.

The Commission erred in finding that the total accrued depletion and depreciation in Canadian's properties as of December 31, 1939, is the sum of \$2,134,269.

69.

The Commission erred in finding that Canadian's depletion expense for the year 1939 was the sum of \$80,969.

70.

The Commission erred in finding that Canadian's depreciation expense for the year 1939 was the sum of \$157,774.

71.

The Commission erred in any event in its computation of depletion allowances because it assumes that Canadian will recover all of the gas currently under its acreage as determined by the Commission, whereas all of the substantial evidence in this case points to the fact that it will not do so.

72.

The Commission erred in not basing its annual depreciation and depletion expense upon the present fair value of Canadian's properties.

73.

The Commission erred in allowing only the sum of \$150,-

738 as working capital instead of the sum of \$190,000 claimed by Canadian.

74.

The Commission erred in making its working capital allowance in the same amount for all future years based upon the amount found by the Commission to be proper for the year 1939, and in not finding that the proper working capital allowance for the years 1939 to 1947, both inclusive, is as follows:

1939	\$190,000
1940	205,000
1941	220,000
1942	230,000
1943	245,000
1944	265,000
1945	275,000
1946	285,000
1947	275,000

75.

The Commission erred (Op., p. 36) in finding that the probability of future additions to Canadian's properties for the years 1942 to 1947 are speculative. Such finding is not supported by substantial evidence.

76.

The Commission erred in not granting Canadian's Petition to Reopen for the purpose of taking additional evidence, in that, if such petition had been granted, Canadian could at this time introduce evidence as to future additions required in 1942, against which no charge of speculation could be made.

77.

The Commission erred in not making findings and allowances for future property additions for the years 1942 to 1947 in the amounts for said respective years as to the production and gathering systems, as shown in Statement No. 3 of Exhibit No. 184, which Statement shows necessary future property additions for said years 1942 to 1947 in the aggregate amount of \$1,009,500.

78.

The Commission erred in using, as Canadian's rate base, (Op., p. 38, Finding No. 10), original cost computed as of December 31, 1939, less accrued depreciation and depletion, and plus working capital.

79.

The Commission erred (Op., p. 38, Finding No. 10), in finding that Canadian's proper rate base is the sum of \$9,372,496.

80.

The Commission erred in including in any rate base for Canadian to be used in these proceedings any values applicable to Canadian's production and gathering properties and facilities, and in not limiting the rate base to values applicable to Canadian's transmission properties and facilities.

81.

The Commission erred in not making any finding as to the present fair value of Canadian's properties subject to the jurisdiction of the Commission and using the amount so found as the rate base.

82.

The Commission erred in not finding that the total original cost of Canadian's production, gathering and transmission properties extended through 1947 is \$16,626,957.

83.

If it shall be finally held that the Commission has jurisdiction for rate-making purposes over all of Canadian's properties, including its production and gathering facilities, and if it shall be further finally held that the rate base is to be based upon original cost, then the Commission erred in not using the sum of \$16,626,957 in computing Canadian's rate base.

84.

The Commission erred in not finding that the prevailing market value of gas in its natural state at the wellhead in the Texas Panhandle Gas Field, including Canadian's portion thereof, is 4c per Mcf. on a 16.4 pound pressure base.

85.

The Commission erred in not finding that the prevailing market value of gas in its natural state at the intake side of the Bivins Compressing Station is 7c per Mcf. on a 16.4 pound pressure base.

86.

The Commission erred in not finding that the reasonable transportation cost per Mcf. of transporting natural gas from the intake side of Bivins Compressing Station to Clayton Junction, New Mexico, for the different years 1939 to 1947, inclusive, is as follows:

1939	3.29c
1940	3.85c
1941	3.70c
1942	3.63c
1943	3.96c
1944	4.04c
1945	4.09c
1946	4.24c
1947	4.42c

87.

The Commission erred in not finding that the estimated volume of gas to be delivered at Clayton Junction, New Mexico, by Canadian to Colorado for the years 1939 to 1947, both inclusive, and the total and Mcf. cost of said gas computed under the contract of January 3, 1928, between Canadian and Colorado and the total cost and Mcf. cost of said volumes of gas using a 7-cent market value of said gas at the intake side of Bivins compressing station, plus a reasonable transportation cost therefrom to Clayton Junction, New Mexico, are as follows:

Volume (Mcf. delivered at Clayton Junction, N. M.)	Mcf.	Contract Cost of all gas delivered at Clayton Junction, N. M.		Cost of all gas delivered at Clayton Junction, N. M., using 7¢ market, value at Bivens intake plus transportation to Clayton Junction	
		Amount	Per Mcf.	Amount	Per Mcf.
1939	18,377,500	\$1,221,008	6.64c	\$1,891,022	10.29c
1940	18,830,659	1,323,494	7.03c	2,043,286	10.85c
1941	20,345,148	1,293,088	6.35c	2,176,464	10.70c
1942	20,807,395	1,238,270	5.95c	2,211,063	10.63c
1943	20,915,828	1,244,759	5.95c	2,293,108	10.96c
1944	21,343,807	1,207,771	5.66c	2,355,481	11.04c
1945	21,767,854	1,175,875	5.40c	2,415,251	11.09c
1946	21,767,854	1,232,651	5.66c	2,447,015	11.24c
1947	21,767,854	1,733,845	7.97c	2,486,168	11.42c

88.

The Commission erred in not finding that the price of gas to be delivered to Colorado at Clayton Junction, New Mexico, provided to be paid Canadian under its contract of January 3, 1928, is less than the prevailing market value for said gas at the intake side of the Bivins compressing station before the extraction of natural gasoline, plus a fair charge for transporting said gas between the intake side of said Bivins compressing station and Clayton Junction, New Mexico.

89.

In any event the Commission erred in not limiting its rate-regulatory order as to gas sold by Canadian to Colorado to a proper rate for the transportation of gas by Canadian from the end of Canadian's gathering line at the intake of the Bivins Station to the point of delivery to Colorado at Clayton Junction, New Mexico, and in adding such proper transportation charge to the fair market value of the gas at the intake side of Bivins Compressing Station, which fair market value, under the uncontradicted evidence, is 7c per Mcf. Such action would avoid an assumption of jurisdiction by the Commission over Canadian's production and gathering properties, facilities, operations and business, which jurisdiction is expressly with-

held and negatived by the Natural Gas Act. The Commission committed error in going beyond this in its Opinion, Findings and Order.

90.

The Commission erred in not finding that the present market value of the gas leaseholds in the Texas Panhandle Field held by Canadian as of January, 1941, was the sum of \$15,646,784.64.

91.

The Commission erred in not finding that the fair value of Canadian's leaseholds in the Texas Panhandle Field is largely in excess of the cost thereof as shown on Canadian's books.

92.

The Commission erred in not finding that the equivalent original cost of Canadian's production and gathering facilities, as would be required for the production and gathering of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$11,811,410.

93.

The Commission erred in not finding that the equivalent original cost of Canadian's transmission system, as would be required for the transmission of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$4,307,737.

94.

The Commission erred in not finding that the equivalent original cost of Canadian's production and gathering facilities, as would be required for the production and gathering of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, less depreciation and depletion as of December 31, 1938, is not less than \$7,001,667, and when extended through 1947, not less than \$8,770,769.

95.

The Commission erred in not finding that the equivalent original cost of Canadian's transmission system, as would

be required for the transmission of all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, less depreciation as of December 31, 1938, is not less than \$3,257,379, and when extended through 1947, not less than \$3,914,220.

96.

The Commission erred in not finding that the total equivalent original cost of Canadian's production, gathering and transmission system for all gas delivered to Colorado at Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$16,119,147.

97.

The Commission erred in not finding that the present fair value of Canadian's property used and useful in the production, gathering and transmission of natural gas to Clayton Junction, New Mexico, extended through 1947, is not less than \$13,135,965, exclusive of working capital.

98.

The Commission erred in not finding that the present fair value of Canadian's property used and useful in the production, gathering and transmission of all gas to Clayton Junction, New Mexico, except Colorado's direct sale gas, extended through 1947, is not less than \$12,684,989, exclusive of working capital.

99.

The Commission erred (Op., p. 42) in not setting forth and making a finding as to each of the deductions from Canadian's 1939 expense suggested by the Commission's staff and allowed by the Commission and found by the Commission to be reasonable. Canadian is absolutely unable, from the Commission's opinion, to determine the items of its 1939 expense which the Commission has disallowed and cannot reconcile the total expense deductions made by the Commission with the adjustments made by the Commission's staff in exhibits introduced in evidence. Consequently, Canadian cannot and is deprived of the right to direct proper Specifications of Error to the deductions from expenses made by the Commission and to the different

items of deduction aggregating the total deduction made by the Commission. The failure of the Commission to make proper findings as to the expense deductions so made deprives Canadian of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

100.

The Commission erred in finding that any of the expense adjustments made by the Commission's staff are reasonable, and in not finding that each and all of said adjustments are unreasonable.

101.

The Commission erred in finding that unless the adjustments made by the Commission are made, the operating expenses of Canadian are overstated by the amount thereof.

102.

The Commission erred in deducting the item of \$6,614 from expenses. (Op., p. 42.)

103.

If, as indicated on page 42 of its opinion, the Commission has deducted the sum of \$151,591 from Canadian's plant account for past delay rentals, the Commission erred in so doing.

104.

The Commission erred in making each and all of the expense deductions indicated on page 42 of its Opinion.

105.

The Commission erred (Op., pp. 43-44) in finding that the allowance of income taxes in the amount of \$66,403 as an expense item for the future, together with increase in business, constitutes a fair estimate of the future. Said finding is not supported by substantial evidence.

106.

The Commission erred in basing its expense allowance for the future upon Canadian's 1939 expense.

107.

The Commission erred in not granting Canadian's Petition to Reopen heretofore filed and receiving further evidence as to the increased amount of Canadian's income and other taxes for the year 1941, which increase is admitted in the Commission's Opinion, and in not using an amount not less than Canadian's actual 1941 tax expense as the estimate of Canadian's tax expense for the future.

108.

To allow Canadian for the future as an expense item only the amount of taxes paid in the year 1939 will necessarily deprive Canadian of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

109.

The Commission erred (Op., p. 44) in allowing as operating expense only the sum of \$753,191.

110.

The Commission erred (Op., p. 44) in allowing as tax expense only the sum of \$177,162.

111.

The Commission erred (Op., p. 44) in allowing total revenue deduction only in the aggregate amount of \$1,169,096.

112.

The Commission erred (Op., p. 44) in finding that Canadian will have \$1,224,291 income available for return based upon 1939.

113.

The Commission erred in not finding that the reasonable

estimated total operating costs of Canadian for the years 1940 to 1947, both inclusive, are not less than the following:

1940	\$2,269,903
1941	2,166,294
1942	2,192,137
1943	2,246,717
1944	2,262,285
1945	2,254,260
1946	2,219,333
1947	2,043,837

114.

The Commission erred in not finding that the reasonable estimated total operating costs of Canadian for the years 1940 to 1947, both inclusive, excluding Colorado's direct sale gas, are not less than the following:

1940	\$2,194,419
1941	2,071,007
1942	2,075,867
1943	2,151,539
1944	2,200,274
1945	2,192,740
1946	2,160,467
1947	1,988,261

115.

The Commission erred in taking into consideration or basing any annual expense finding or order upon Canadian's production and gathering properties, facilities, operations and business.

116.

The Commission erred in finding that a rate of return of $6\frac{1}{2}\%$ is fair and reasonable. Said finding is not supported by substantial evidence.

117.

The Commission erred in not finding that a rate of return of $6\frac{1}{2}\%$ will result in rates to be charged by Canadian which are lower than the lowest reasonable rates.

118.

The Commission erred in finding that any rate of return less than 8% is fair and reasonable, and in not finding that a rate of return of 8% is the lowest reasonable rate.

119.

The Commission erred (Op., p. 53) (a) in using a rate base of \$9,375,000; (b) in finding income available for return of \$1,224,291; (c) in applying a 6½% rate to the rate base; and (d) in finding that a net income of \$1,224,291 will result in any excess of return to Canadian. Each of said findings is not supported by substantial evidence in the case.

120.

Referring to the statements and findings of the Commission on pages 53 to 59 of the Commission's Opinion under the heading, "Allocation of Costs," Canadian states and shows as follows:

(a) The Commission erred (Op., p. 53) for reasons hereinabove shown in stating that Canadian has had any earnings in excess of a reasonable return.

(b) The Commission erred (Op., p. 53) in stating that the Commission's determination of earnings is based upon all the components of a rate case.

(c) The Commission erred (Op., p. 53) in stating that the properties and businesses of Canadian, Colorado, and Colorado-Wyoming Gas Company constitute, for all practical purposes, a single project.

(d) The Commission erred (Op., p. 54) in finding that it is necessary or proper to alter the prices received by Canadian from Colorado for gas sold by Canadian to Colorado.

(e) The Commission erred in ordering any change in the prices charged by Canadian for its gas for the reason that each of such changes is based upon and involves an exercise of assumed rate-regulatory jurisdiction over Canadian's production and gathering properties, facilities, operations and business, which jurisdiction the Commission does not have.

(f) The Commission has purported to make an allocation which it calls an "Allocation of Costs." There are no sufficient preliminary findings of fact based upon evidence in the case and there is no sufficient explanation of what the Commission means by its "Allocation of Costs" and how it has applied this theory to enable Canadian properly to direct Specifications of Error to the general statements and findings made in this portion of the Commission's Opinion. The failure of the Commission to make such proper preliminary findings and explanation of its "Allocation of Costs" theory so as to enable Canadian properly to direct Specifications of Error thereto deprives Canadian of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(g) The Commission erred (Op., p. 55) in finding that an allocation of physical property need not be made in arriving at a proper determination of rates for the sale of gas within the jurisdiction of the Commission, and in not making such allocation.

(h) The Commission erred in not finding a rate base for that part of Canadian's property subject to the rate-regulatory jurisdiction of the Commission.

(i) The Commission erred in not finding a rate base for that part of Canadian's property subject to the rate-regulatory jurisdiction of the Commission and then making an allocation of the physical properties and other values included in such rate base as between the portion or value thereof properly applicable to the gas over which the Commission has rate-regulatory jurisdiction and the portion of said gas over which the Commission does not have such rate-regulatory jurisdiction.

(j) The Commission erred (Op., p. 55) in stating that Canadian did not submit in evidence a complete presentation of its entire operations broken down between jurisdictional and non-jurisdictional operations.

(k) The Commission erred (Op., p. 55) in stating that all that can be accomplished by an allocation of physical properties can be attained by allocating costs, including the return.

(l) The Commission erred (Op., p. 55) in stating that the cost allocation method is by far the most practicable and business-like. Said method is not practicable or business-like, is contrary to law, and its necessary effect is an assumption of jurisdiction by the Commission over properties, income and expenses over which it has no jurisdiction.

(m) The Commission erred (Op., p. 56) in stating that Canadian's allocation evidence assumed a field price for gas as the prevailing market price. This statement is not supported by substantial evidence. The uncontradicted evidence in the case established the prevailing market price for said gas which was used by Canadian in its allocation exhibit.

(n) The Commission erred (Op., p. 56) in stating that Canadian's evidence was based upon assumptions, without stating what those assumptions were, which are referred to by the Commission, and the Commission erred in stating that Canadian's exhibits do not square with realities or are patently unreasonable as applied to properties and operating conditions such as those concerned. None of said statements is supported by substantial evidence.

(o) The Commission erred (Op., p. 56) in stating that the Commission's staff exhibits on cost allocation followed principles that have long been recognized as reasonable in the public utility field and are widely accepted. Said statement is not supported by substantial evidence and its application in this case is contrary to law and to the facts of the case and will necessarily result in depriving Canadian of its property without due process of law.

(p) The Commission erred (Op., p. 56) in not showing what "peak day demand" it refers to as the basis of the allocation of fixed costs.

(q) In any event, the Commission erred in basing its cost allocation on a "peak day demand" in one year only, to-wit, the year 1939.

(r) The Commission erred in not recognizing and finding that the costs for the production and transmission of gas depend primarily upon load factor rather than volume.

(s) The Commission erred (Op., p. 56) in not making a finding as to the amounts used by the Commission as fixed costs and the amounts used as variable costs, and the items thereof.

(t) The Commission erred (Op., p. 57) in finding that the principles and methods of cost allocation presented by the Commission's staff are the most appropriate and reasonable for Canadian. Such finding is not supported by substantial evidence.

(u) The Commission erred in accepting the allocation exhibit which it has adopted because the allocation of transmission line cost between volumetric costs and capacity costs have been made in a manner that is arbitrary and discriminatory in that volumetric costs have been increased and capacity costs decreased, thereby favoring or minimizing the costs charged to resale gas.

(v) The Commission erred in the allocation of transmission line capacity costs, particularly with reference to fixed charges and return on the investment. Failure to make property allocations on which to base return and depreciation charges lead only to incorrect, arbitrary and discriminatory allocations of costs.

(w) The Commission erred in adopting the allocation exhibit of the Commission's staff because the allocation of that portion of transmission line costs alleged to apply to capacity costs has been improperly allocated as between resale and direct sale gas. The percentage distribution used applies only to that portion of the property situated at and immediately north of Bivins Compressing Station, whereas the main line has at least four different ratios that should have been used.

(x) The Commission erred in adoption of the allocation exhibit of the Commission's staff because no weight was given therein to the distance the gas is transported from the field to the several customers and the number of times the gas must be handled or compressed before arriving at its destination.

sion's Opinion (pp. 53-59) under the heading, "Allocation of Costs," Canadian states and shows as follows:

(a) The Commission erred in making any findings as to cost allocations based upon Exhibits submitted by Commission's staff for the reason that none of such exhibits purported to make any cost allocation with respect to regulated and unregulated business, and therefore afforded no basis for allocation of costs with respect to regulated and unregulated business.

(b) The Commission erred in making any findings as to cost allocations based upon exhibits submitted by Commission's staff for the reason that none of such exhibits took into account the service preference provided by contract which domestic and commercial gas has over industrial gas, and particularly direct sales gas.

(c) The Commission erred in making any findings as to cost allocations based upon exhibits submitted by Commission's staff for the reason that such exhibits do not take into account the service preference which regulated gas sales have over the sales of unregulated gas, which service preference is provided by contract.

122.

The Commission erred in making each and all of the allocations applicable to Canadian set forth on page 57 of its Opinion.

123.

The Commission erred (Op., p. 58) in stating that Canadian's sales to Colorado and to Clayton Gas Company are made under rate schedules on file with the Commission, FPC Rate Schedules Nos. 1 and 2, respectively, and are under its jurisdiction. Canadian has heretofore filed with the Commission its contracts with Colorado and Clayton Gas Company, but under full reservations, as the Commission's records show.

124.

The Commission erred in finding (Op., p. 58) that Canadian's revenues from sales exceed costs by \$561,000.

125.

The Commission erred (Op., p. 58) in finding that Canadian's rates and charges under its contracts with Colorado and Clayton Gas Company heretofore filed with the Commission and referred to by the Commission as FPC Rate Schedules Nos. 1 and 2 are unjust and unreasonable.

126

The Commission erred in not finding that Canadian's charges for its gas sold to Colorado and Clayton Gas Company are just and reasonable.

127.

The Commission erred in finding that it should require Canadian to reduce its rates and charges by the amount of \$561,000, or any other amount.

128.

If the Commission is correct in its finding that Canadian and Colorado operations comprise a single operating system (Op., p. 11) then the Commission erred in ordering a total reduction of \$551,000 in the price of gas to be paid by Colorado to Canadian in that said reduction applies to all gas sold by Canadian to Colorado, the record showing without question that approximately 25% of gas sold by Canadian to Colorado is direct sale gas and is not subject to the jurisdiction of the Commission. In that event there should be no reduction in Canadian's contract prices with respect to the volume of gas that is not sold by Colorado for resale.

129.

The finding that Canadian is a natural gas company, as defined in the Natural Gas Act and subject to the rate-regulatory jurisdiction of the Commission is not supported by substantial evidence. The Commission erred in overruling the objections and pleas to its jurisdiction heretofore made and filed in these proceedings by Canadian.

The Commission erred in basing its findings that Canadian is a natural gas company within the meaning of the Natural Gas Act and therefore subject to the rate-regulatory jurisdiction of the Commission as to all or any of

Canadian's business, operations or properties solely upon the fact that Canadian transports natural gas in interstate commerce or sells such gas in interstate commerce for resale for ultimate public consumption, and in failing to consider and to make findings as to those facts established by uncontradicted evidence in the record as follows:

(a) Canadian and its incorporators, in its articles of incorporation, disclaimed any right to become a public utility or common carrier:

(b) In no document or filing or statement, written or oral, since its origin has Canadian claimed any right or intent to be or become a common carrier or public utility.

(c) Canadian transports and sells only its own gas which is produced and gathered by it from lands owned and operated by it under lease except one tract in which it owns the mineral rights in fee. It does not purchase gas from any one and does not transport any gas except its own.

(d) Canadian has never claimed nor attempted to exercise the right of condemnation or eminent domain, but has purchased privately all its right of way, and other property, and has acquired from states and counties, and paid for where necessary, the right to cross beneath the highways with its pipe line.

(e) Canadian has never applied for nor received any certificates of public convenience and necessity from any public official or regulatory body, and possesses no special privilege, grant or right of any kind from any public authority relating to the distribution of natural gas.

(f) Canadian has never made any filings of "rates or tariffs for the sale or transportation of gas with any state or municipal regulatory commission or authority, and has only filed its contracts for the sale of gas with this Commission under a disclaimer that it is a "natural gas company" within the meaning of the Act and with full reservation of right.

(g) Canadian never advertised or otherwise offered to sell gas to the public generally, but has limited its sales to three individual customers under specific privately nego-

tiated written contracts, namely, Colorado, with delivery at Clayton Junction, New Mexico, and Gray, Oklahoma; Amarillo Oil Company with delivery at the well for the City of Amarillo and Channing markets, and at different points along Canadian's pipe line system for Dalhart, Hartley and Texline, Texas, markets; and to Clayton Gas Company for the Town of Clayton, New Mexico, with delivery at the Clayton town border.

(h) Canadian's gas sale contracts are not uniform. They all contain their separate specifically negotiated terms, provisions and conditions.

(i) No such contract is for an indefinite term, but each contract is for a definite limited term, subject only to certain renewal options provided for therein.

(j) All Canadian's gas sale contracts were executed prior to the adoption of the Natural Gas Act at a time when no governmental authority, Federal or state, had attempted to declare the sale or transportation of natural gas to be "affected with a public interest" and at a time when Section 1 of the Interstate Commerce Act expressly disclaimed any such status.

(k) Canadian sells its own gas only and does not sell or hold itself out as being willing to sell gas to any ultimate consumer, or to any distributor of natural gas for ultimate consumption.

(l) Canadian has never devoted its property to the public service but has conducted its business as a private enterprise.

130.

Referring to the formal findings set forth in numbered paragraphs in the Commission's "Order Reducing Rates," Canadian states and shows as follows:

(a) The Commission erred in making Finding No. (1) in so far as it finds that Canadian owns and operates fa-

ilities for the production and gathering of natural gas in interstate commerce, and in so far as it finds that Canadian is a natural gas company within the meaning of the Natural Gas Act.

(b) The Commission erred in making Finding No. (2) in so far as it finds that the entire system from the Texas Panhandle Field to Denver is operated as a single property.

(c) As to the finding in Finding No. (3) that natural gas sold to Colorado and to Clayton Gas Company are sales for resale in interstate commerce, the Commission erred in so far as said finding covers gas sold by Canadian to Colorado and which gas is sold by Colorado to industrial purchasers, upon the ground that gas covered by Colorado's such direct sales are not sales by Canadian for resale in interstate commerce within the meaning of the Natural Gas Act.

(d) The Commission erred in making each and every of its other findings in its Finding No. (3).

(e) The Commission erred in making Findings Nos. (4) to (14), inclusive. Said findings are not supported by substantial evidence.

131.

As to the six formal orders contained in the Commission's "Order Reducing Rates," Canadian states and shows that the Commission erred in making each and every of said orders lettered (A) to (F), inclusive.

132.

In an attempt to ascertain the preliminary, primary or basic facts and figures upon which the Commission's ultimate facts found in its Opinion, Findings and Order are based, and which preliminary, primary or basic facts and figures are not set forth in the Commission's Opinion, Findings and Order, Canadian and Colorado, as the Commission's records will disclose, did, on March 30, 1942, cause a telegram to be sent to the Commission reading as follows:

"In Making Study of Opinion No. 73 in Canadian River and Colorado Interstate Gas Company Rate Case Find it Difficult to Check Various Figures Against Exhibits and Also are Unable to Check Various Computations Made Which are Based on Findings of Commission Not Reflected in Exhibits. In Order to Thoroughly Digest and Understand All Computations it Will be Necessary to Confer With Your Representative and Examine Working Papers That Were Used in Making Computations. Would Like to Do This This Week, Wednesday or Thursday. Appreciate Immediate Reply."

On April 1, 1942, the Commission did deny the request contained in the above quoted telegram, said denial being as follows:

"The Requests Contained in Your Telegram of March 30, 1942 Re Opinion No. 73 in Matter of Canadian River Gas Company and Colorado Interstate Gas Company Have Been Considered and Are Denied."

As indicated in previous Specifications of Error, the Commission's ultimate findings and conclusions are, in numerous instances, not supported by preliminary, primary or basic findings set forth in the Commission's Order or Opinion No. 73 incorporated therein so that Canadian is not enabled to direct specific Specifications of Error as it could do had there been set forth in the Commission's Order or Opinion proper preliminary, primary or basic findings. To the extent that Canadian has not been able more specifically to specify error, such failure has been due to the lack of such preliminary, primary or basic findings by the Commission and due to the failure of the Commission to disclose, by its findings and opinion, the methods and principles employed by it in arriving at its ultimate conclusions and findings. In failing to make proper findings and in failing to grant Canadian's request for such additional findings and such additional disclosure by the Commission of the methods and principles used by it, and the computations made in arriving at its results, this Petitioner has been further deprived of its rights under the

Natural Gas Act and under the Constitution of the United States.

Dated this 9th day of April, 1942.

CANADIAN RIVER GAS COMPANY,
By: P. C. SPENCER,
Its Vice President.

P. C. SPENCER,
630 Fifth Avenue, New York, New York.

ADKINS, PIPKIN, MADDEN & KEFFER,
CHAS. H. KEFFER,
930 Fisk Building, Amarillo, Texas.,

SMITH, BROCK, AKOLT & CAMPBELL,
JOHN P. AKOLT,
931 Fourteenth Street, Denver, Colorado,
Attorneys for Canadian River Gas Company.

[Verification and certificate of service omitted.]

Motion of Colorado Interstate Gas Company for
Stay of the Commission's Order of March 18, 1942.

Now comes Colorado Interstate Gas Company, one of the Defendants-Respondents in the above-entitled and numbered causes, hereinafter sometimes referred to as Petitioner or Respondent or as Colorado Interstate, and moves the Commission for an order herein staying and suspending the effective date and operation of its order dated March 18th, 1942, and served upon Colorado Interstate on or about the 25th day of March, 1942, wherein Colorado Interstate is ordered to file on or before April 25th, 1942, new schedules of rates and charges for the transportation and sale of natural gas for resale in interstate commerce, which new schedules shall reflect a reduction in the net income of Colorado Interstate by not less than \$2,065,000 per year, and which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 15, 1942.

The grounds upon which this motion is based are as follows:

I.

Colorado Interstate is also filing herewith its "Petition of Colorado Interstate Gas Company for Rehearing and to Reopen", which is hereby referred to and made a part hereof. Said petition for rehearing and to reopen is filed with diligence and in good faith, upon grounds which petitioner believes to be well founded, and such petition sets forth in considerable detail the errors which petitioner believes have been committed by the Commission, and the grounds upon which petitioner believes that a rehearing should be granted, and that these proceedings should be reopened for the purpose of taking further evidence.

II.

As pointed out in the Commission's Opinion, the hearings in this case before the Trial Examiner consumed 102 hearing days. The transcript of the testimony is in excess of 15,000 pages, and there are over 300 exhibits. The records and the briefs filed by the parties herein, as well as the Commission's own Opinion, show that serious and substantial questions of law and fact have been raised and presented, and have now been decided by the Commission. Numerous legal questions herein have never been heretofore presented to nor decided by the courts. As pointed out in its petition for rehearing, Colorado Interstate in good faith contends that the Commission has erroneously applied certain rulings and decisions of the Supreme Court of the United States to the facts in this case. Colorado Interstate, also in good faith, contends in said petition that numerous findings of fact made by the Commission are not supported by substantial evidence, or are contrary to the evidence in the case. Petitioner respectfully and sincerely submits that such rehearing and reopening should be granted. If, however, said petition for rehearing and to reopen shall be denied, it is Colorado Interstate's intention, pursuant to and within the time allowed by the Natural Gas Act, to file a petition to review said order in the proper United States Circuit Court of Appeals.

III.

If the order of March 18, 1942 be not stayed, and its operation be not suspended, pending a ruling by the Com-

mission on the petition for rehearing and to reopen, and if the Commission shall deny said petition for rehearing and to reopen, then, pending the preparation and filing of a petition for review in the United States Circuit Court of Appeals, directed to such order of the Commission, and pending which determination of such petition for review by the Court, Colorado Interstate will sustain serious, substantial and irreparable damages and losses in that the operation of the order would deprive Colorado Interstate of not less than \$2,605,000 in revenue per annum, or at the average rate of \$172,083.33 per month. The order of March 18, 1942 shows on its face that the Commission, basing its findings on operations for the year 1939, found that the total gross revenue of the respondent for the transportation and sale of gas for resale in interstate commerce amounted to \$4,438,000, from which it follows that a reduction of such revenues by the amount of \$2,065,000 amounts on such basis to a reduction of 46-1/2% of this respondent's gross revenue. On the basis of the Commission's figures the present net income of respondent is the sum of \$2,065,000 and \$619,775 (the return allowed), namely, \$2,684,775. The reduction ordered by the Commission is 76% of such computed net income. Such a drastic reduction in gross revenue and net income if finally affirmed, will require drastic changes in the operations of respondent, and in no event should such a drastic reduction be imposed until such order has been fully and deliberately reconsidered by this Honorable Commission, and in the event that the action of this Commission is adverse, then until Colorado Interstate has had full opportunity to exhaust its legal remedies, and until it has had said order judicially reviewed, as provided by the statutes and the Constitution of the United States.

IV.

Should the Commission's order of March 18, 1942, be set aside by the Commission, pursuant to Colorado Interstate's petition for rehearing and to reopen, or should said order be set aside by the Courts upon review, there is grave danger that the revenues which Colorado Interstate would be deprived of if said order shall not be so stayed, will be forever lost to Colorado Interstate. There is a question as to whether the Commission or the Courts could make:

provision for the recouping by or reimbursement to Colorado Interstate of the very substantial losses which Colorado Interstate would have sustained. No provision is contained in the Natural Gas Act authorizing the Commission, or the Courts to order such recouping or reimbursement. Colorado Interstate may be without means of recouping or recovering such losses in future rate proceedings or otherwise. Colorado Interstate is, therefore, without clear or adequate protection against the possible irrevocable loss of the amount represented by the reduced revenues during the period pending consideration by the Commission, and pending the review of the order by the Courts, except by declining to observe the order during such period, in which event it lays itself open to prosecution under the severe penal provisions of Section 21 of the Natural Gas Act. Without admitting that Colorado Interstate would be subject to such severe penalties under the facts in this case, and under the particular circumstances confronting it, Colorado Interstate, nevertheless, urges that it should not be put to the alternative of either accepting the reduction in its revenues in the drastic amounts above pointed out, with the doubtful right ever to recover such loss should the order be finally modified or reversed, or of defying the order of the Commission, and thus risking the severe penalties and fines, and the imprisonment of its officers under the provisions of said Act should the order ultimately be upheld.

V.

No express provision is contained in the Natural Gas Act for relief by appeal to any Court for a stay of the operations of the order until after the denial of the petition for rehearing and to reopen, and filing of a petition for review with said Court under subdivision "b" of Section 19 of the Natural Gas Act. If the Natural Gas Act be construed as denying Colorado Interstate the right to a review by a Court of competent jurisdiction of the refusal of the Commission to stay the operations of its order dated March 18, 1942, and if the Natural Gas Act be construed as purporting to authorize the Commission to enforce said order, pending the disposition of the petition for rehearing and to reopen, then the Natural Gas Act itself is null and void in

so far as it purports to authorize the enforcement for such order during such period, in that it would thus operate to deprive Colorado Interstate of the right to a judicial review, and to judicial relief against the injuries and damages that would be sustained by reason of the operation of the order during the period pending final disposition by the Commission of such petition for rehearing and to reopen, all in violation of the due process clause of the Fifth Amendment to the Constitution of the United States. Likewise, the order itself, for the same reasons, would be null and void, in so far as it would operate to reduce Colorado Interstate's revenues during the period pending the filing and disposition of the petition for rehearing and to reopen, and any effort by the Commission to enforce the provisions of the order requiring Colorado Interstate to reduce its rates and charges during such period would result in an unconstitutional administration of the Natural Gas Act, in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

- VI.

No such emergency exists as would justify subjecting Colorado Interstate to the peril of losing its revenues in the substantial amount of \$2,065,000 per annum, (or at an average rate of \$172,083.33 per month, or at the rate of 46-1/2%), or in forcing it to take the only other alternative of risking the severe punishment and penalties under the provisions of Section 21 of the Natural Gas Act. In this connection, it is manifest that the ultimate object of the Commission, and the underlying objective of Congress in the enactment of the Natural Gas Act was and is to secure for the ultimate consumers fair and reasonable rates for natural gas in those cases where the sale of gas was subject to the jurisdiction of Congress and the Commission. It was not the objective of either Congress or the Commission merely to lower gate rates or lower wholesale rates for the benefit of distributing companies such as those to whom Colorado Interstate sells its gas. Assuming that the gas sold by Colorado Interstate is ultimately held to be subject to the jurisdiction of the Commission under the Act, and the reduction or a substantial part thereof is affirmed, nevertheless it is apparent that there can be no advantage

or benefit to the ultimate consumers, unless and until the rates charged by the distributing companies, the customers of this respondent-petitioner are reduced. Until the motion for rehearing be considered and disposed of, and if said motion for rehearing be not granted, then until the termination of the proceedings on appeal to the Courts for a review of the Commission's order, no regulatory body having jurisdiction over the rates to the ultimate consumer would be warranted in reducing rates to the ultimate consumer, until it be finally determined that such reduced gate rates or wholesale rates to the distributing companies are valid and enforceable. In this connection, petitioner points out that although the reduction order amounts to \$2,065,000 per annum, nevertheless, as the Commission can find from the record in this case, the sales of this fuel, natural gas, declines substantially at this time of year, and during the immediate Spring and Summer months when the order of March 18, 1942 can be reconsidered or judicially reviewed, the amount in controversy would be greatly reduced.

The practical effect, therefore, of the order, and the reduction of respondent's revenues arising from the operation of the order, pending the disposition of the motion for rehearing and the review by the Court, would be to deprive respondent of the amount represented by the reduction in its prices and charges and transferring of said sums not to the ultimate consumers, but to the distributing companies under contracts approved and executed, and substantially performed long prior to the Natural Gas Act, and with respect to which no distributing company is complaining.

VII.

In the event that the Commission shall deny petitioner's application for rehearing and to reopen, then, unless the order of March 18, 1942 is stayed, petitioner will be compelled either to file the schedules reflecting the reduction of \$2,065,000 per annum of its revenues from the sale of gas in interstate commerce for resale, and so arrange its schedules as to distribute, equitably and fairly, said amount to its seven customers, the six distributing companies and Natural Gas Pipeline Company of America, or else refuse

to file such schedules and risk the penalties provided by the Act. Petitioner states that it will require more time than allowed by such order, adequately to work out new schedules of rates and charges of such vital importance to petitioner and to its customers.

VIII.

No public interest will be served by requiring Colorado Interstate to pay over sums at the annual rate of \$2,065,000 per annum, or at the average monthly rate of \$172,083.33 per month, during the period pending the disposition of its petition for rehearing and to reopen by the Commission, and if the Commission's action be adverse, then pending review of the order of the Commission by the Courts, to the several distributing companies; all for the reasons more specifically set forth hereinabove.

IX.

This application for stay is based not only upon the facts hereinabove stated, but also upon each and all of the grounds set forth in Colorado Interstate's petition for rehearing and to reopen, which is made a part hereof as aforesaid.

Wherefore, Colorado Interstate prays that the operation of the order dated March 18, 1942 be stayed and suspended until the Commission shall rule upon its petition for rehearing and to reopen, and, in the event that the ruling of the Commission is adverse, then pending the review of said order by the Courts on review, as provided by the Natural Gas Act, the laws of Congress and the Constitution of the United States.

Respectfully submitted this 9th day of April, 1942.

COLORADO INTERSTATE GAS COMPANY.

By WILLIAM A. DOUGHERTY.

Vice President, 30 Rockefeller
Plaza, Room 3000, New York,
New York.

[Verification and certificate of service omitted.]

**Motion of Canadian River Gas Company for Stay of
Commission's Order of March 18, 1942.**

Now Comes Canadian River Gas Company, one of the Defendants-Respondents in the above-entitled and numbered causes, hereinafter sometimes referred to as Applicant and sometimes as Canadian, and moves the Commission to enter and issue an order herein staying and suspending the effective date and the operation of its Order, dated March 18, 1942, and served upon Canadian on or about March 25, 1942, ordering and directing Canadian to file, on or before April 25, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale which shall reflect a reduction of not less than \$551,000 per annum in the rates and charges made, demanded or received by Canadian for the transportation and sale of natural gas for resale to Colorado Interstate Gas Company, and not less than \$10,000 per annum in the rates and charges made, demanded or received by Canadian for the transportation and sale of natural gas for resale to Clayton Gas Company.

The grounds upon which this motion is based and presented are as follows:

I.

Canadian is, simultaneously with the filing hereof, filing with the Commission its "Petition of Canadian River Gas Company for Rehearing and to Reopen" of even date herewith. Said Petition for Rehearing and to Reopen is filed in good faith and upon grounds which Canadian believes to be well founded and sets forth, in considerable detail and by numerous specifications of error, the errors which Canadian believes have been committed by the Commission in its said Order, Findings and Opinion of March 18, 1942, and the grounds upon which Canadian believes these proceedings should be reopened for the purpose of taking further evidence. Said Petition for Rehearing and to Reopen is by this reference hereby incorporated herein and made a part hereof.

II.

As pointed out in the Commission's Opinion, the hearings in this case before the Trial Examiner consumed 102 hearing days. The transcript of the testimony is in excess of 15,000 pages, in addition to over 300 exhibits. Briefs of the various parties to this proceeding in excess of 2200 pages in length have been filed. As shown by these briefs and as indicated in the Commission's Opinion, serious and substantial questions of law and fact have been raised and presented to and now have been decided by the Commission. A number of the legal questions raised have never been decided by or presented to the courts. The application made by the Commission of certain decisions of the Supreme Court of the United States referred to in the Commission's Opinion to the facts in this case involving Canadian is seriously questioned. Canadian sincerely and in good faith contends, as pointed out in its Petition for Rehearing that numerous findings of fact made by the Commission are either not supported by any evidence or by substantial evidence. It is Canadian's sincere hope that the Commission will find merit in and grant Canadian's Petition for Rehearing and to Reopen. If, however, said Petition for Rehearing and to Reopen shall be denied by the Commission, it is Canadian's intention, pursuant to and within the time provided for in the Natural Gas Act, to file a petition for review directed to said Order in the proper United States Circuit Court of Appeals.

III.

If the Order dated March 18, 1942, be not stayed and its operation be not suspended pending a ruling by the Commission on Canadian's Petition for Rehearing and to Reopen, and if the Commission shall deny said Petition for Rehearing and to Reopen, then pending the preparation and filing of a petition for review in the United States Circuit Court of Appeals directed to such Order of the Commission, and pending a determination of such petition for review by the United States Circuit Court of Appeals, Canadian will sustain serious, substantial and irreparable damages and loses in this, to-wit:

A. The operation of the Order will deprive Canadian of the sum of \$561,000 per annum, or at the rate of \$46.750 per month.

B. As the record shows without contradiction, Canadian's entire income is based upon the cost of gas computed under its contract of January 3, 1928, with Colorado Interstate Gas Company, and amendments thereto. Any income received by Canadian through sales of gas to Amarillo Oil Company and Clayton Gas Company or any other customer operates only to reduce the costs and prices paid by Colorado Interstate Gas Company under its said contract with Canadian. The cost of gas sold by Canadian to Colorado Interstate Gas Company is computed by deducting all outside revenues received by Canadian (including sales of gas to others) from the aggregate cost of producing and delivering all gas sold to purchasers. This cost includes interest and amortization of funded and other indebtedness of Canadian, but does not include depreciation and depletion.

C. As the record shows, as of June 1, 1928, Canadian issued its \$11,000,000 of 6% sinking fund gold bonds under a trust indenture with Equitable Trust Company, now succeeded by Chase National Bank of New York, as Successor Trustee. Beginning June 1, 1930, and periodically thereafter, bonds were redeemed through the sinking fund in accordance with the trust indenture, and at the present time the total amount of bonds outstanding is \$3,868,000. All of said bonds are still owned by Colorado Interstate Gas Company, but are pledged by Colorado Interstate Gas Company as collateral security for its outstanding bonds, and said outstanding bonds of the Colorado Interstate Gas Company now in the amount of \$6,864,000 are held by a third party or parties other than said Colorado Interstate Gas Company.

Interest at the rate of 6% per annum is payable on Canadian's outstanding bonds on June 1 and December 1 of each year. Said trust indenture securing said bonds obligates Canadian, in addition to the payment of interest, to pay to the Trustee, as a sinking fund, on June 1, 1942 and again on December 1, 1942, the sum of \$303,243, and further obligates Canadian, on June 1 1943, and semi-annually there-

after on the 1st day of December and the 1st day of June in each year, to and including the 1st day of December, 1947, to pay into said sinking fund the sum of \$300,270.

From the above it will be seen that on June 1, 1942, the Company is obligated, under said trust indenture, to pay the sum of \$303,243 into the sinking fund, and \$116,040 as interest, or a total of \$419,283; and again on December 1, 1942, the sum of \$303,243 in the sinking fund, and \$107,130 as interest, or a total of \$410,373.

Said trust indenture covers all the producing, gathering and transmission properties of Canadian and, by supplemental indenture thereto, also dated June 1, 1928, covers Canadian's contracts, including its contract of January 3, 1928, with Colorado Interstate Gas Company. Said trust indenture obligates Canadian to perform all the obligations of said contract of January 3, 1928 with Colorado Interstate Gas Company and its other outstanding contracts. Said trust indenture expressly provides that in case Canadian shall default in the payment of interest or sinking fund, or shall default in the performance of its other obligations which it has agreed to perform under said trust indenture, or if Canadian shall become bankrupt, numerous cumulative remedies may be exercised by the Trustee under said trust indenture and the bondholders, including the right of receivership, entry upon and possession of the trust estate, the right to declare all the bonds immediately due and payable, and the right of foreclosure and sale.

Canadian further shows that in addition to its obligation under said trust indenture and under said contract of January 3, 1928 with Colorado Interstate Gas Company to pay said principal and interest, including sinking fund, at the time, in the manner and in the amounts above stated, Canadian is obligated, among other things, both by said contract of January 3, 1928 and said trust indenture, to own, maintain and develop its gas lands, including its leasehold and other interests therein, and to develop, drill for, produce and gather gas therefrom, and to maintain and operate its transmission line and transport natural gas therethrough.

Canadian further shows that, in addition to its outstand-

ing bonded indebtedness, as of December 31, 1941, it was indebted to Colorado Interstate Gas Company in the sum of \$1,281,214, on 6% notes issued from time to time at par for cash to Colorado Interstate Gas Company to finance Canadian's obligations under said contract of January 3, 1928, which notes, as provided in said contract, are redeemable in monthly installments.

Canadian states and shows that it has no source of income to make the various payments above mentioned and to enable it to perform its various obligations which are necessary to be performed if its contracts are to be complied with and if natural gas is to be delivered by Canadian to its customers and by said customers to the ultimate consumers except such income as it receives from Colorado Interstate Gas Company computed as provided in said contract of January 3, 1928. Under the provisions of its trust indenture, Canadian is prohibited from making any sale or sales of gas other than those covered by present contracts without the consent of the Trustee; and, as hereinbefore pointed out, the receipts from additional sales, if any, would serve only to reduce the amounts to be paid to Canadian by Colorado Interstate Gas Company under its aforesaid contract with Canadian. Moreover, under said contract any other cash received by Canadian from outside sources, whether through the sales of property, the borrowing of money, or otherwise, would likewise inure to the credit and benefit of Colorado Interstate Gas Company under said contract, and would not be available to Canadian to meet its cash deficiency caused by the Commission's Order. Such cash deficiency can be supplied only through Colorado Interstate Gas Company if Canadian is to observe and perform its present contract and trust indenture obligations.

It necessarily follows, and is a fact, that if Canadian is required to charge and receive from Colorado Interstate Gas Company and Clayton Gas Company \$561,000 per annum less than provided for in said contract of January 3, 1928, Canadian will be short by just that sum in an amount necessary to perform its obligations under said contract of January 3, 1928, and under said trust indenture. The further necessary effect of this inability to perform said obligations will be to render

it impossible for Canadian to continue to maintain, develop and operate its gas leaseholds and its transmission system so as to deliver gas to Colorado Interstate Gas Company and Clayton Gas Company in manner provided by the contracts with said companies and in manner necessary to enable Canadian's customers properly to furnish gas to the ultimate consumers. The further necessary effect of the failure to receive this \$561,000 will be to cause Canadian to default in its payment and other obligations under said trust indenture. Receivership, foreclosure or the enforcement of other remedies provided for in said trust indenture must necessarily be expected.

Canadian claims and submits that it will suffer great and irreparable damage by the enforcement of the Commission's Order, and earnestly submits that said Order is erroneous, and its necessary effect is and will be to deprive Canadian of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

IV.

Not only will the enforcement of the Commission's Order cause Canadian the irreparable damage hereinabove shown, but its enforcement during the consideration by the Commission of Canadian's Petition for Rehearing and to Reopen and during the period of consideration by the United States Circuit Court of Appeals of Canadian's petition for review which will be filed, as above stated, if the Commission shall deny Canadian's Petition for Rehearing and to Reopen will not prejudice or be detrimental to the Colorado Interstate Gas Company or to the ultimate consumers, and, in fact, for the reasons stated in the previous paragraph, such enforcement during said periods will be detrimental and will prejudice the ultimate service to the ultimate consumers.

It is further pointed out that although the reduction order amounts to \$561,000 per annum, nevertheless, as the Commission can find from the record in this case, Canadian's sales decline substantially at this time of the year. During the immediate spring and summer months, when the order of March 18, 1942, can be reconsidered or judicially

reviewed, the amount in controversy would be relatively small.

V.

Should the Commission's Order of March 18, 1942, be set aside by the Commission pursuant to Canadian's Petition for Rehearing and to Reopen, or should said Order be set aside by the courts upon review, there is danger that the revenues which Canadian will be deprived of, if said Order shall not be stayed up to the time said Order shall be so set aside, will be forever lost to Canadian. There is a question as to whether the Commission or the court could make provision for the recouping by or reimbursement to Canadian of the various substantial losses which Canadian will have sustained. No provision is contained in the Natural Gas Act authorizing the Commission or the court to order such recouping or reimbursement, and Canadian may be without means of recovering or recouping such losses as a result of further rate proceedings, or otherwise. Canadian is without clear or adequate protection against the possible irrevocable loss of the amount represented by the reduced revenues during the period pending consideration by the Commission of the Petition for Rehearing and to Reopen and the review of the orders by the courts, except by declining to observe the order during such period, in which event it might be prosecuted under the severe penal provisions of Section 21 of the Natural Gas Act. Without admitting that Canadian would be subject to such severe penalties under the circumstances confronting it, Canadian respectfully urges that it should not be put to the alternative of accepting the reduction in its revenues in a very substantial amount each month, as above pointed out, with a doubtful right to recover its losses, should the Order be set aside as the result of its Petition for Rehearing and to Reopen, or as a result of its petition to the courts for review, or if defying the Order of the Commission and thus taking the risk of becoming subject to the severe penalties in fines and imprisonment under the provisions above mentioned should the Order ultimately be upheld.

VI.

No express provision is contained in the Natural Gas Act for relief by appeal to any court for a stay of the operation of the Order until after the denial of the Petition for Rehearing and to Reopen and the filing of a petition for review under Subdivision (b) of Section 19 of the Act. If the Natural Gas Act be construed as denying Canadian the right to a review by a court of competent jurisdiction of the refusal of the Commission to stay the operation of its Order dated March 18, 1942, and if the Natural Gas Act be construed as purporting to authorize the Commission to enforce said Order pending the disposition of the Petition for Rehearing and to Reopen, then the Natural Gas Act itself is null and void in so far as it purports to authorize the enforcement of the Order during such period in that it would operate to deprive Canadian of the right to a judicial review and to judicial relief against the injuries and damages it would sustain by reason of the operation of the Order during the period pending the final disposition by the Commission of the Petition for Rehearing and to Reopen, in violation of the due process clause of the Fifth Amendment to the Constitution of the United States. Likewise, the Order itself, for the same reasons, would be null and void in so far as it would operate to reduce Canadian's revenues during the period pending the filing and disposition of the Petition for Rehearing and to Reopen, and any effort by the Commission to enforce the provisions of the Order requiring Canadian to reduce its rates and charges during such period would result in an unconstitutional administration of the Natural Gas Act in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

VII.

No such emergency exists as would justify subjecting Canadian to the peril of losing its revenues in the substantial amount of \$561,000 per annum, aggregating \$46,750 per month, or of taking the risk of subjecting Canadian to the severe punishment and penalties under the provisions of Section 21 of the Natural Gas Act. In this connection Canadian points out that as shown by the record, the Public Service Company of Colorado, which is the largest pur-

chaser of gas from Colorado Interstate Gas Company over which the Commission has any jurisdiction, has a franchise in the City of Denver which will not expire until February, 1947, and which franchise specifically provides for the price of gas to be charged by the Public Service Company of Colorado to its customers in the City of Denver. It is manifest that the ultimate objective of the Commission and the underlying objective of the Congress in the enactment of the Natural Gas Act was and is to secure for the ultimate consumers fair and reasonable rate for natural gas. However, even if the Order of the Commission be ultimately upheld, it is apparent there can be no advantage that can possibly accrue to such ultimate consumers by reason of enforcing the rates and charges set up by the Order of the Commission dated March 18, 1942, during the period pending the disposition of Canadian's Petition for Rehearing and to Reopen and the review of the order by the courts. Until the Petition for Rehearing and to Reopen be finally disposed of, and if said Petition be not granted until determination of the proceedings in court for a review of the Commission's Order, neither the Public Service Company of Colorado nor the City and County of Denver, or its electorate, would be warranted, even if legally justified, in reducing rates to the ultimate consumers until it be finally determined that the Commission's Order herein entered is valid and enforceable. The same is obviously true as to the Clayton Gas Company and the other resale customers of Colorado Interstate Gas Company.

The practical effect, therefore, of the Order and the reduction in Canadian's revenues resulting from the operation of the Order, pending the disposition of the Petition for Rehearing and to Reopen and the review by the courts, would be to deprive Canadian of the amount represented by the deduction in its prices and charges and transferring said sums, not to the ultimate consumers, but to Colorado Interstate Gas Company, Clayton Gas Company, neither of which has complained, of Canadian's rates and charges.

VIII.

No public interest will be served by requiring Canadian to pay over sums aggregating \$46,750 per month, during the period pending the disposition of Canadian's Petition

for Rehearing and to Reopen by the Commission and the review of the Order by the courts; to the Colorado Interstate Gas Company and Clayton Gas Company which have not complained of Canadian's rates and charges as being unjust and unreasonable.

IX.

This application for stay is based not only upon the facts hereinabove stated but also upon each and all of the grounds set forth in Canadian's Petition for Rehearing and to Reopen being simultaneously filed herewith and hereinabove incorporated herein and made a part hereof.

Wherefore, Canadian prays that the operation of the Order dated March 18, 1942, be stayed and suspended until the Commission shall rule upon Canadian's Petition for Rehearing and to Reopen and in the event said Petition for Rehearing and to Reopen be denied pending the review of said Order by the courts on review, as provided by the Natural Gas Act.

Dated this 9th day of April, 1942.

CANADIAN RIVER GAS COMPANY

By P. C. SPENCER,

Its Vice President.

Room 2757, 630 Fifth Ave.,

New York, N. Y.

P. C. SPENCER,

Room 2757, 630 Fifth Avenue, New York, N. Y.

ADKINS, PIPKIN, MADDEN & KEFFER,

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SMITH, BROCK, AKOLT & CAMPBELL,

JOHN P. AKOLT,

931 Fourteenth Street, Denver, Colorado,

Attorneys for Canadian River Gas Company.

[Verification and certificate of service omitted.]

Order Granting in Part and Denying in Part the Motion
of Canadian River Gas Company for Stay of Commis-
sion's Order of March 18, 1942.

Upon motion filed with the Commission April 14, 1942, by Canadian River Gas Company, praying that the operation of the Commission's order dated March 18, 1942, in the above-entitled matter, be stayed and suspended until the Commission shall rule upon said Company's petition for rehearing, and, in the event such petition be denied, pending the review of said order by the Courts on review, as provided by the Natural Gas Act:

The Commission orders that:

(A) Paragraph (D) of its order of March 18, 1942, in this proceeding, be and it is hereby amended to read as follows:

"(D) Canadian River Gas Company shall file on or before May 19, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraphs (B) and (C) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 20, 1942."

(B) The motion of Canadian River Gas Company, referred to above, be and it is hereby denied, except as provided in paragraph (A) above:

(C) Nothing herein shall be construed as a determination of the Commission upon the Petition for Rehearing filed by Canadian River Gas Company on April 14, 1942, which is now pending before the Commission.

By the Commission,

LEON M. FUQUAY, Secretary.

Order Granting in Part and Denying in Part the Motion of Colorado Interstate Gas Company for Stay of Commission's Order of March 18, 1942.

Upon motion filed with the Commission April 14, 1942, by Colorado Interstate Gas Company, praying that the operation of the Commission's order dated March 18, 1942, in the above-entitled matter, be stayed and suspended until the Commission shall rule upon said Company's petition for rehearing, and, in the event such petition be denied, pending the review of said order by the Courts on review, as provided by the Natural Gas Act:

The Commission orders that:

(A) Paragraph (C) of its order of March 18, 1942, in this proceeding, be and it is hereby amended to read as follows:

“(C) Colorado Interstate Gas Company shall file on or before May 19, 1942, new schedules of rates and charges for or in connection with the transportation and sale of natural gas in interstate commerce for resale to reflect the reductions ordered in paragraph (B) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on and after May 20, 1942.”

(B) The motion of Colorado Interstate Gas Company, referred to above, be and it is hereby denied, except as provided in paragraph (A) above;

(C) Nothing herein shall be construed as a determination of the Commission upon the Petition for Rehearing filed by Colorado Interstate Gas Company on April 14, 1942, which is now pending before the Commission.

By the Commission.

LEON M. FUQUAY, Secretary.

Opinion No. 73-A.

At pages 2 to 3 in our Opinion No. 73 entered on March 18, 1942, disposition was made of the petitions of Canadian and of Colorado Interstate Companies, filed March 11, 1942, to reopen these proceedings.

However, in view of the claims asserted by the Companies, in petitions for rehearing and to reopen, filed April 14, 1942, as to increases in Federal income taxes for periods subsequent to the close of the hearing, it is deemed advisable to supplement our previous Opinion in more detail with respect to the position taken by the Companies therein.

The Companies allege that the Federal income and excess profits taxes, which they were required to pay in connection with operations for the year 1941, greatly exceed the amounts allowed by the Commission. Actually, as hereinafter shown, the taxes allowed by the Commission exceed the amounts which would have accrued in 1941 had the Companies' earnings been limited to a fair return for those years.

The fair return, that is the operating income, found reasonable, in our order, for Canadian Company amounts to \$609,375.¹ To arrive at a base for calculating taxable income, this amount should be increased by income taxes allowed in computing the operating income, namely, \$66,403,² and also by the annual amortization of rate case expenses allowed in the amount of \$41,000,³ which expenses are customarily deductible items for income tax purposes in the year paid rather than in the year amortized. From this total of \$716,778 there should be deducted interest and the difference between other non-operating income and deductions, in the net sum of \$417,431,⁴ which is allowable for income tax purposes, but which is payable out of the fair return and also an additional amount of \$355,007⁵ rep-

¹Finding No. 10.

²Exhibit No. 163—Statement No. 1.

³Exhibit No. 163—Statement No. 2.

⁴Exhibit No. 168, page 1.

⁵Depreciation and depletion per books for 1939 and deducted in computing taxable income was \$593,750 (Exhibit No. 168, page 1); that allowed as reasonable and proper in Finding No. 11 was \$238,743.

representing depreciation and depletion deductible for income tax purposes, in excess of that allowed by the Commission. The total of these two latter deductions exceeds the aforesaid amount of \$716,778.⁵

If Canadian Company had been limited in 1941 to a return of \$609,375, which was found to be a fair and reasonable return,⁶ it would have had no net taxable income and would not have been obligated to pay any Federal income tax for that year. Therefore, the amount of \$66,403 for 1939 Federal income taxes, allowed in Finding No. 11 as a reasonable item of operating expense, was ample.

The fair return allowed Colorado Company amounts to \$619,775,⁷ to which should be added income taxes allowed in Finding No. 9 in the amount of \$391,526,⁸ amortization of rate case expenses in the sum of \$43,000⁹ and the excess of "Other Income" over "Income Deductions," in the sum of \$95,454,¹⁰ giving a total maximum taxable income of \$1,149,755. The normal income and surtaxes of 31 per cent¹¹ applied to the foregoing figure would disclose a tax liability of \$356,424, as against the \$391,526 allowed in our order. Furthermore, the amount of Colorado Company's taxable income will be smaller than \$1,149,755, inasmuch as the said company has been deducting for income tax purposes approximately \$272,000 more for depreciation and amortization than was allowed in determining a fair return.¹² Giving recognition to these additional deductions would reduce the tax, at the rate of 31 per cent, to approximately \$272,039, as compared with \$391,526 heretofore allowed

⁶Finding No. 10.

⁷Finding No. 8.

⁸Exhibit No. 140, page 118.

⁹Opinion 73, page 45.

¹⁰Exhibit No. 140, page 1.

¹¹Under the Revenue Act of 1941, the effect of the application of the several brackets of normal surtax rates is to provide a combined normal and surtax rate fractionally less than 31 per cent; however, for convenience, the computation herein is based upon a 31 per cent rate and represents the maximum income and surtax rates under said Act.

¹²The depreciation deducted for income tax purposes in the year 1939 in the amount of \$422,869, together with the amortization of contracts and franchises, deductible for income tax purposes, in the amount of \$131,537, or a total of \$554,406 (Exhibit 170-A), exceed the depreciation and amortization, totalling \$282,195 (See p. 34 of Op., and Finding No. 9, of Order), by the amount of \$272,211.

Accordingly, if Colorado Company had been limited in 1941 to a return of \$619,775, which was found to be a fair and reasonable return,¹³ the total Federal income tax which it would have been obligated to pay on its taxable net income for that year would have been approximately \$119,000 less than the amount of \$391,526¹⁴ allowed as an operating expense. The Commission's allowance therefore was ample.

The reductions heretofore ordered will eliminate excess earnings and will also eliminate any liability for claimed excess profits tax. Among other things, the excess profits tax is based upon excess earnings of the taxable year, as compared with the four-year base period, namely, the years 1936 to 1939. The Companies' earnings for these years¹⁵ were substantially in excess of those allowed as reasonable in our orders herein. As stated at page 39 of our Opinion, a comparative analysis of the Companies' income statements for each of the years 1937, 1938 and 1939, as well as for the 12 months ended September 30, 1940, "reveals little differences in the net operating results for 1939 compared with either the three-year average or the 12 months ended September 30, 1940." The ordered reduction in rates in these proceedings will eliminate the Companies' excess income. Their income from operations under the said Orders will be below, rather than above, the 1936 to 1939 average.

The proceedings herein originated with the filing of a complaint by the City and County of Denver, Colorado, in December 1938. Extended hearings have been had and a record made comprising some sixteen thousand pages of transcript of testimony and 316 exhibits. As stated in our main Opinion, ample opportunity was afforded the parties to fully present their evidence. At the time of the close of the hearing in April 1941, this Nation's defense program with its incident economic problems had been in progress for a number of months and evidence in the record as to that fact was given its due weight.

In Canadian and Colorado Companies' petitions to reopen these proceedings, isolated items of claimed increase

¹³Finding No. 8.

¹⁴Exhibit No. 140, page 118.

¹⁵Exhibit 185.

of cost of operations are asserted, but no allegations are made as to either the gross or the net operating revenues realized by the Companies for the year 1941 and the period subsequent thereto; and no allegations are made as to the manner or the amount in which said revenues differ from those utilized by the Commission in its Orders and which the Commission considered productive of the fair return allowed in such orders; nor are the claimed increased costs applied to such operating revenues so as to indicate in what manner or amount the changed economic conditions affect the Companies' fair returns. No allegations of this nature are made by the Companies, either as to operations under existing rates or as to operations that would obtain if the ordered reductions were made effective.

The aforesaid matters are in further explanation of the reasons set forth in our Opinion No. 73 for denying the Companies' petitions to reopen these proceedings, and do not in any manner modify or change the finding and ordering clauses of the Orders of March 18, 1942, which Findings and Orders are predicated upon the record made herein.

Orders denying Canadian and Colorado Companies' petitions for rehearing and to reopen will be entered. An order denying Colorado-Wyoming Company's petition for rehearing will be entered.

LELAND OLDS, Chairman,
CLAUDE L. DRAPER, Commissioner,
JOHN W. SCOTT, Commissioner,
CLYDE L. SEAVEY, Commissioner.

Dated at Washington, D. C., this 13th day of May, 1942.

J. H. GUTRIDE, Acting Secretary.

Order Denying Petition for Rehearing and to Reopen.

Upon consideration of the petition of Canadian River Gas Company filed April 14, 1942, for rehearing with respect to the Commission's order reducing rates of said Company entered on March 18, 1942; and the Commission's Opinion No. 73, and to reopen the said proceedings; and

upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A, which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942;

The Commission finds that:

No new facts have been presented or alleged in the petition for rehearing and to reopen which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no principles of law are stated in the said petition for rehearing and to reopen which were not fully considered by the Commission before it rendered said order and said Opinion;

Now, therefore, the Commission orders that:

The petition for rehearing and to reopen be and it is hereby denied.

By the Commission

J. H. GUTRIDE, Acting Secretary.

Order Denying Petition for Rehearing and to Reopen.

Upon consideration of the petition of Colorado Interstate Gas Company filed April 14, 1942, for rehearing with respect to the Commission's order reducing rates of said Company entered on March 18, 1942, and the Commission's Opinion No. 73, and to reopen the said proceedings; and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A, which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942;

The Commission finds that:

No new facts have been presented or alleged in the petition for rehearing and to reopen which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no prin-

ciples of law are stated in the said petition for rehearing and to reopen which were not fully considered by the Commission before it rendered said order and said Opinion:

Now, therefore, the Commission orders that:

The petition for rehearing and to reopen be and it is hereby denied.

By the Commission.

J. H. GUTRIDE, Acting Secretary.

Order Denying Petition for Rehearing and Stay.

Upon consideration of the petition of Colorado-Wyoming Gas Company filed April 20, 1942, for rehearing and stay with respect to the Commission's order reducing rates of said Company entered on March 18, 1942, and the Commission's Opinion No. 73; and upon further consideration of all previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 73-A which is incorporated by reference as a part hereof, adhering to its Opinion No. 73 and its order of March 18, 1942:

The Commission finds that:

No new facts have been presented or alleged in the petition for rehearing which would justify a reversal or revision of the Commission's said order and said Opinion No. 73, entered March 18, 1942, and no principles of law are stated in the said petition for rehearing and stay which were not fully considered by the Commission before it rendered said order and said Opinion:

Now, therefore, the Commission orders that:

The petition for rehearing and to stay be and it is hereby denied.

By the Commission.

J. H. GUTRIDE, Acting Secretary.

Complaint for Correction of Gas Rates at the Denver Gate.

Your complainant City and County of Denver, a municipal corporation of the State of Colorado, respectfully shows:

1. Your complainant is a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado and a charter adopted by the people of the City and County of Denver pursuant to said Article.

2. Defendant Public Service Company of Colorado is a corporation duly organized and existing under and by virtue of the laws of the State of Colorado and is engaged in the business of distributing and selling natural gas for industrial and domestic use in the City and County of Denver, Colorado.

3. Defendant Colorado Interstate Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business of transporting natural gas through an interstate pipe line from in or near the town of Clayton in the State of New Mexico to various towns and cities in the State of Colorado including the City and County of Denver.

4. Canadian River Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is engaged in the business of transporting natural gas through an interstate pipe line from various wells in the State of Texas to connections with the Colorado Interstate Gas Company in or near the town of Clayton, in the State of New Mexico.

5. Your complainant is informed and believes and on such information and belief alleges that all of the defendants are, in a manner not fully known by your complainant, affiliated with the Cities Service Power and Light Company, a corporation of the State of Delaware, and associated companies, and your complainant is informed and believes and on such information and belief alleges that they do not deal with one another at arm's length but are all controlled by one and the same group of persons through common

ownership of stock and interlocking directorates and that the contracts between the defendants for the sale and purchase of gas hereinafter referred to, are made pursuant to dictation as to both parties to such contracts by the persons holding such common control.

6. Your complainant further alleges that defendant Canadian River Gas Company obtains the gas from gas wells which it owns or controls in the State of Texas, which gas it transports to the vicinity of the town of Clayton in the State of New Mexico and that such gas is transported across the boundary line between the State of Texas and the State of New Mexico.

7. At a point in or near the town of Clayton in the State of New Mexico the pipe lines of defendant Canadian River Gas Company connect with pipe lines of defendant Colorado Interstate Gas Company and at said point the Canadian River Gas Company delivers gas which it has collected as aforesaid to defendant Colorado Interstate Gas Company for a price and on terms and conditions unknown to this complainant.

8. Defendant Colorado Interstate Gas Company transports the gas which it acquires from defendant Canadian River Gas Company as aforesaid from the point in or near the town of Clayton in the State of New Mexico, where the pipe line of defendant Canadian River Gas Company connects with the pipe line of defendant Colorado Interstate Gas Company, through the State of New Mexico and across the boundary line between the State of New Mexico and the State of Colorado and through the State of Colorado to various towns and cities in the State of Colorado (including the City and County of Denver) where the gas is sold and delivered by defendant Colorado Interstate Gas Company to various distributing companies which sell and deliver the gas so purchased to consumers in such towns and cities of the State of Colorado and some of such gas is sold in the State of Colorado for use in the State of Wyoming.

9. Defendant Public Service Company of Colorado is the local distributing company for the City and County of Denver and said defendant purchases gas from defendant Colorado Interstate Gas Company at a point known as the

"Denver gate" at or near the boundary line of the City and County of Denver and transports the gas so purchased through pipe lines which it owns in the City and County of Denver to persons residing within the City and County of Denver and to persons and corporations doing business in the City and County of Denver, for local consumption.

10. Your complainant is informed and believes and on such information and belief alleges that defendant Public Service Company of Colorado pays at the Denver gate a price (known as "the Denver gate rate") to defendant Colorado Interstate Gas Company of 40 cents per 1,000 cubic feet of gas at a temperature of 60 degrees Fahrenheit and a pressure of 12.7 pounds per square inch, for gas having a minimum heat content of 800 British Thermal Units per cubic foot under those conditions.

11. Your complainant further alleges that defendant Public Service Company of Colorado distributes and sells the gas so purchased and received from defendant Colorado Interstate Gas Company to consumers in the City and County of Denver at a rate based on the gate rate aforesaid plus a charge for local service.

12. Your complainant further alleges that the gate rate of 40 cents per 1,000 cubic feet of gas as aforesaid charged by defendant Colorado Interstate Gas Company to defendant Public Service Company of Colorado is unreasonable, unjust and discriminatory, that said rate is greatly in excess of the reasonable cost of said gas plus a reasonable charge for transportation and delivery at the city gate of the City and County of Denver; that defendant Colorado Interstate Gas Company sells said gas at a much lower rate to other consumers buying their gas from said company on both sides of the city gate of the City and County of Denver where the service in all material respects is similar to the service rendered to the City and County of Denver save and except that the volume purchased by the other consumers is not so large as the volume purchased by defendant Public Service Company of Colorado for sale in the City and County of Denver and, by reason of the volume of purchase and single point of delivery, any distinction in the unit charge for the gas should reduce the price to the City and County of Denver rather than increase that price.

13. Your complainant alleges that a very large amount of natural gas is sold annually as aforesaid by defendant Public Service Company of Colorado within the City and County of Denver; that such amount for the year 1937, as your complainant is informed and believes and on such information and belief alleges, was 7,330,205 thousand cubic feet, and that the extra amount paid by the users of such natural gas in the City and County of Denver on account of the unreasonable, unjust and discriminatory charge of 40c per 1,000 cubic feet of gas amounts to a very large sum of money annually and will continue to amount to a very large sum unless and until relief is granted as herein prayed.

Wherefore your complainant prays that the Federal Power Commission will investigate and determine the reasonable cost and charge for gas used in the City and County of Denver where the same is produced and the reasonable value of the facilities and appliances by which such gas is transported to the City and County of Denver and the reasonable cost of such service and the reasonable compensation to be paid to the owners of such facilities and appliances for the use thereof and the reasonable gate rate to be charged by defendant Colorado Interstate Gas Company to defendant Public Service Company of Colorado at the Denver gate and will substantially reduce the gate rate of forty cents per 1,000 cubic feet of gas now being charged therefor.

The Public Service Commission of Wyoming filed with the Commission on or about January 9, 1939, in its Docket No. G-121, a complaint which is printed in the record in No. 2561 in this court.

**Answer of Defendants Colorado Interstate Gas Company
and Canadian River Gas Company.**

In this answer the following abbreviations will be used:

"Commission" refers to the Federal Power Commission.

"Denver" refers to the City and County of Denver, complainant herein.

"Public Service" refers to defendant Public Service Company of Colorado.

"Colorado Interstate" refers to defendant Colorado Interstate Gas Company.

"Canadian River" refers to defendant Canadian River Gas Company.

"Defendants" refers to these answering defendants, namely, Colorado Interstate Gas Company and Canadian River Gas Company.

Defendants appear specially for the purpose of filing the following special pleas:

I.

Colorado Interstate was organized under the laws of the State of Delaware, and Canadian River was organized under the laws of the State of Delaware, for the purpose of engaging in the project of bringing natural gas to Denver and other places in Colorado. Canadian River was expected to and subsequently did acquire gas leaseholds and gas wells on more than 300,000 acres of gas lands in the Amarillo or Panhandle field of Texas, drilled additional wells thereon, built gathering lines and other facilities, and constructed a compressor station and a pipe line to Clayton, New Mexico, at which point delivery of the gas was to be made to Colorado Interstate. Colorado Interstate was expected to and did subsequently construct a pipe line with compressor sta-

tions from Clayton, New Mexico, to Denver and other places in Colorado, and eventually made contracts for the sale of natural gas to distribution companies and industries in Colorado. Of these contracts the one made with Public Service for the sale of natural gas for distribution in Denver was of the utmost importance, and without which the project could not have been undertaken and carried out. The carrying forward of this project of bringing natural gas to Denver and other points in Colorado, in accomplishing which there was expended in excess of Twenty Million Dollars (\$20,000,000.00), took place only by reason of the series of events hereinafter related.

Prior to 1927 there had been general discussion in the City of Denver and consideration given by the Mayor and other officials of Denver to the possibility of having natural gas brought to Denver from the Amarillo field in Texas.

Defendants say that at a special election held in Denver on February 8, 1927, a franchise was granted to Public Service (which had been engaged in distributing manufactured gas in Denver for many years) to construct, maintain and operate an electric light and gas plant in Denver. This franchise was for a period of twenty (20) years and contained a special provision with respect to natural gas in Section IV-c, as follows:

"If at any time during the first ten (10) years of this franchise the Mayor and Council of the City after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, shall by majority vote of the Council with approval of the Mayor determine that it is feasible to bring natural gas to Denver and shall give notice to the Company of their findings, together with engineering information upon which such determination was based, and provided a fair and reasonable rate is established for such service, then within two years thereafter the Company shall make such supply available to the City. In the event of its failure so to do, then the Company shall pay, as a penalty, the sum of fifty thousand dollars (\$50,000.00) per year, for the then remaining years of this franchise that the Company remains in default.

"If, after the first ten (10) years of this franchise a supply of natural gas is found to be available under the foregoing stipulation and conditions, and the City is willing to grant the Company a franchise for natural gas for a term of twenty (20) years, and the Company refuses to make such supply available, then the Company shall pay, as a penalty, the fifty thousand dollars (\$50,000.00) aforesaid during the then remaining years of this franchise that the Company remains in default."

Thereafter Mayor Ben F. Stapleton and the City Council employed A. C. King, an engineer of Chicago, Illinois, to make a thorough examination and investigation as to the feasibility of bringing natural gas to Denver. Pursuant to said employment said King made such investigation, and under date of August 10, 1927, reported the result thereof and his findings and recommendations to the Mayor and City Council of Denver. In such report said King reviewed in detail the project as then proposed by Colorado Interstate which contemplated the construction of a pipe line to bring natural gas to Denver from the Amarillo, Texas, field, and with respect to the rate to be charged by Colorado Interstate to Public Service he concluded that a 40 cent gate rate was reasonable; that as the result of such investigation and report, and based thereon, the City Council by ordinance, approved September 14, 1927, determined that it was feasible to bring natural gas to Denver. The ordinance in Section 1 provided:

"That after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith, upon the final passage, publication, and approval of this Ordinance by the Mayor, to deliver to said Public Service Company of Colorado a duly certified copy hereof, together with a verified copy of the 'Report on Proposed Natural Gas Rates for

Denver dated August 10, 1927, which was prepared, after investigation, by A. C. King, Consulting Engineer of Chicago, Illinois, and which said report constitutes the engineering advice and information upon which said findings and determination are based, and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had for particularity and notice of which is hereby given to said Public Service Company of Colorado in conformity to the provisions of said Section IV-c of said above mentioned Franchise."

In and by said ordinance the rates to be charged by Public Service to local consumers were fixed for the full unexpired term of the aforementioned franchise, which was for a period of twenty (20) years from and after its approval on February 8, 1927.

After the enactment of said franchise negotiations were begun between those interested in the organization of Colorado Interstate and the representatives of Public Service. After the action taken by the Mayor and City Council in having a report made on the feasibility of bringing natural gas to Denver, negotiations were further and more actively continued, culminating in an agreement between Colorado Interstate and Public Service on January 3, 1928, all of which was prior to the construction of the pipe line. Said agreement contained the terms and conditions and the price to be paid by Public Service to Colorado Interstate for natural gas for distribution in Denver and its environs for a term of twenty (20) years, with the right reserved in Public Service to discontinue taking natural gas if it did not possess a franchise after February 8, 1947. There was not then, and is not now, any affiliation between Public Service and the interests which were responsible for the organization of Colorado Interstate through common ownership of stock, interlocking directorates or otherwise, except that Public Service subsequently became the owner of 15% of the issued and outstanding capital stock of Colorado Interstate and was represented on its board of directors by one director out of a total directorate of seven members; and all negotiations between such interests were and have been at all times carried on at arm's length.

At the time of making said contract with Public Service, Colorado Interstate had not been engaged in the gas business, and did not hold then and has not at any subsequent time held itself out as willing or able to serve the public generally with natural gas or to supply said commodity to any other customers than that limited number with which it has private contracts. It does not have corporate authority in its charter to engage in the public utility business or to act as a common carrier, and has never exercised any of the rights or privileges of a public utility or common carrier nor held itself out as such. Its Certificate of Incorporation issued by the State of Delaware provides as follows:

"Provided that nothing herein shall be construed to authorize the corporation to transport natural gas for others as a carrier for hire or to sell natural gas for others as a carrier for hire, or to sell natural gas except by special contracts, or to constitute the corporation a common purchaser of natural gas or a public utility corporation."

Defendants say that at the time of entering into said contract of January 3, 1928, Colorado Interstate was free to enter into such a contract or not, depending upon whether the terms and conditions of such a contract were satisfactory to it; that said contract was only entered into after the investigation and report made by the said A. C. King had been accepted and approved by the Mayor and City Council; that said report approved the 40 cent M.c.f. gate rate, and that thereafter the ordinance of September 14, 1927, approving the King report, was passed, all of which was made known to Colorado Interstate, and which report and action by the Mayor and City Council induced Colorado Interstate and Canadian River to undertake the project of bringing natural gas to Denver. Defendants further allege, that were it not for such inducement Colorado Interstate would not have entered into the contract of January 3, 1928, with Public Service, or undertaken the project of bringing natural gas to Denver.

The defendants say they relied principally upon the contract for the sale of gas made by Colorado Interstate and Public Service in making investments in excess of twenty

million dollars (\$20,000,000.00) for the purpose of bringing natural gas into the State of Colorado and that had it not been for said contract such investments would not have been made. In entering into said contract Colorado Interstate acted in complete good faith and it, together with Canadian River, invested their funds as aforesaid in reliance upon the good faith of Denver.

Defendants say that in filing this complaint Denver is seeking to destroy the contract rights which became vested in Colorado Interstate by virtue of said agreement of January 3, 1928, with Public Service; and which agreement it was induced to make in reliance upon the action of Denver, as above referred to. At the time said contract was made the parties thereto were competent and qualified to enter into it, and it was a private contract not subject to change, abrogation or impairment by any governmental public authority.

Defendants further say that Mayor Stapleton and the other city officials were and are advised of the foregoing facts and of the reliance placed by defendants upon the action of Denver in approving said 40 cent rate for natural gas, as referred to above, and are advised of the fact that in excess of Twenty Million Dollars (\$20,000,000.00) was expended in reliance upon the action so taken by the City. Defendants urge that Denver in equity and good conscience is estopped from now questioning the legality of said 40 cent rate.

If the Natural Gas Act of 1938 is interpreted to confer on this Commission any jurisdiction, power or authority to regulate or change the rates fixed in said contract of January 3, 1928, said Natural Gas Act as so interpreted, and any rules, regulations or orders promulgated or entered by this Commission thereunder, will be null and void and unconstitutional, in that it would deprive Colorado Interstate of its vested rights and of its property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and defendants challenge and deny any jurisdiction in this Commission to modify, set aside or change any of the rates or charges set forth in said contract of January 3, 1928.

II.

Defendants refer to the facts alleged in Section I hereof and deny that the Commission has any jurisdiction over any part of the production, transportation or sale of natural gas which is the subject of this complaint, and challenge and deny any jurisdiction, power or authority of this Commission to enter any order attempting to change, modify or set aside any charge or price at which Colorado Interstate is selling natural gas to Public Service or to other public utilities in the State of Colorado or elsewhere, or to substitute and prescribe any different charges or prices for which Colorado Interstate shall sell natural gas in the State of Colorado or elsewhere, on the ground that Colorado Interstate is not a public utility and has not devoted its property to the public service but is selling a commodity at wholesale to selected customers under private contract. Colorado Interstate has not and does not now hold itself out as willing or able to serve the public generally with natural gas or to supply said commodity to any other customers than that limited number with which it has private contracts. It does not have corporate authority in its charter to engage in the public utility business or to act as a common carrier, and has never exercised any of the rights or privileges of a public utility or common carrier nor held itself out as such. Its Certificate of Incorporation issued by the State of Delaware provides as follows:

"Provided that nothing herein shall be construed to authorize the corporation to transport natural gas for others as a carrier for hire or to sell natural gas for others as a carrier for hire, or to sell natural gas except by special contract, or to constitute the corporation a common purchaser of natural gas or a public utility corporation."

Defendants say that with respect to gas sold by Colorado Interstate in Colorado, the operations of Colorado Interstate and Canadian River constitute in practical effect a single enterprise engaged in owning natural gas leases and resources in the State of Texas, producing natural gas therefrom, transporting the same through pipe lines and other facilities to points in the State of Colorado, and selling

such commodity at wholesale to selected public utility distributing companies and to industrial consumers under private contracts. The operations carried on by Canadian River are not of a public utility nature and its Certificate of Incorporation, issued by the State of Delaware, provides as follows:

"Provided that nothing herein shall be construed to authorize the corporation to transport gas or oil for others as a carrier for hire or to sell gas or oil for others as a carrier for hire or to sell gas or oil except by special contract, or to constitute the corporation a common purchaser of gas or oil or a public utility corporation."

Canadian River has never exercised any of the rights or privileges of a public utility or common carrier, nor held itself out as such, and has sold gas only to one customer in Texas, to one customer in New Mexico, and to Colorado Interstate under the terms of an agreement also dated January 3, 1928.

Defendants say that this enterprise from its inception has always been strictly private in character and that no part of it is affected with a public interest in the sense that the Congress would have jurisdiction, power or authority to enact legislation purporting to authorize this Commission to regulate the prices which it charges for the commodity which it sells.

The Natural Gas Act of 1938 insofar as the same purports to confer or is interpreted to confer on this Commission any jurisdiction, power or authority to regulate, change, modify or set aside the charges or prices at which Colorado Interstate is selling natural gas at wholesale or to authorize this Commission to determine and fix the charges or prices for which said defendants shall sell such commodity deprives defendants of their property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States; and any rules, regulations or orders promulgated by this Commission for the purpose of exercising any jurisdiction, power or authority will be null and void as against these defendants and like-

wise in violation of the provisions of said Fifth Amendment to the Constitution of the United States.

III.

Subject to the ruling of this Commission and of the courts on the foregoing special pleas, and without waiving but still insisting on the same, for its answer to the complaint herein, these defendants:

1. Admit the allegations contained in paragraph 1 of the complaint.

2. Admit the allegations contained in paragraph 2 of the complaint.

3. Admit the allegations contained in paragraph 3 of the complaint, but refer to the allegations made in Section I of this answer in support of the fact that Colorado Interstate's business is of a private character and the rates charged by it are not subject to regulation under the Natural Gas Act of 1938.

4. Admit the allegations contained in paragraph 4 of the complaint, but refer to the allegations contained in Section II of this answer in support of the fact that Canadian River's business is of a private character and the rates charged by it are not subject to regulation under the Natural Gas Act of 1938.

5. Deny the allegations contained in paragraph 5 of the complaint.

6. Admit the allegations contained in paragraph 6 of the complaint.

7. Admit that at a point near the Town of Clayton, New Mexico, the pipe line of Canadian River connects with the pipe line of Colorado Interstate, and at said point the natural gas produced by Canadian River is delivered to Colorado Interstate, under the terms of an agreement between said parties dated January 3, 1928. Defendants say

that the operations of Canadian River and Colorado Interstate constitute in practical effect a single enterprise, as already has been alleged in Section 11 of this answer, and that the terms of said agreement are not controlling in determining a fair and reasonable price which Colorado Interstate should charge for gas delivered to Public Service or to other public utility customers in Colorado.

8. Admit the allegations contained in paragraph 8 of the complaint, but say that the business so carried on by Colorado Interstate is private in character, is not that of a public utility, and the rates charged by Colorado Interstate are not subject to regulation by the Natural Gas Act of 1938.

9. Admit the allegations contained in paragraph 9 of the complaint.

10. Defendants deny that Public Service now pays at the Denver gate a price of 40 cents per thousand cubic feet of gas, and allege that in 1937 Public Service paid for all gas delivered at the Denver city gate at the average of \$0.2862 per thousand cubic feet, and in 1938 at the average of \$0.2865 per thousand cubic feet. The rate paid by Public Service for gas consumed by each domestic consumer in excess of 3,000 cubic feet per month has been reduced from time to time by voluntary action on the part of Colorado Interstate and by private agreement between Colorado Interstate and Public Service, so that the average gate rate charged for that part of the gas purchased by Public Service for distribution to its domestic consumers during the year 1937 was \$0.3661 per thousand cubic feet, and during the year 1938 was \$0.3649 per thousand cubic feet. Defendants say that the unit of measurement as alleged is correct, except that the pressure base is 13.2 pounds per square inch instead of 12.7 pounds per square inch as alleged.

11. Defendants have no knowledge as to the basis used in determining the rates charged by Public Service for gas distributed by it in Denver and, therefore, deny the allegations of paragraph 11 of the complaint.

12. Defendants deny the allegations contained in para-

graph 12 of the complaint and further deny that the rate charged Public Service of Colorado Interstate for gas sold to it under said agreement of January 3, 1928, is unreasonable, unjust or discriminatory. Defendants say that said rate so charged Public Service is just, reasonable and lawful, that it is not unduly discriminatory or preferential, and is in fact the lowest reasonable rate at which gas can be sold at the city gate of Denver in order to permit defendants to earn a fair and reasonable rate of return on the fair value of the property utilized in producing, transporting and selling natural gas to Public Service. In order to fulfill its obligations to Public Service under said agreement of January 3, 1928, defendants will be required to expend large additional sums of money in the future.

13. Defendants admit that a large amount of natural gas is sold annually by Public Service in Denver for domestic, commercial and industrial uses, but that for the year 1937 (ending on December 25, 1937) the amount purchased by Public Service was 6,622,086 M.c.f. at the pressure base of 13.2 pounds. Defendants deny that any part of the rates paid by the consumers of natural gas in Denver results from an unreasonable, unjust or discriminatory or preferential charge made by Colorado Interstate for the gas so sold.

Wherefore defendants pray that the complaint be dismissed.

Colorado Interstate Gas Company, although not a formal party respondent, filed an answer with the Commission in its Docket No. G-121, on or about February 25, 1939, which is printed in the record in No. 2561 in this court.

Canadian River Gas Company, although not a formal party respondent, filed its answer with the Commission in its Docket No. G-121, on or about February 25, 1939, which is printed in the record in No. 2561 in this court.

Public Service Company of Colorado filed an answer (Document No. 3 in the transcript of record) and entered its appearance (official transcript page 10) in the hearing before the Commission.

Order Instituting Investigation.

It appearing to the Commission that:

(a) Canadian River Gas Company, a corporation organized and existing under the laws of the State of Delaware, engaged in the production, gathering, transportation, and distribution of natural gas, owns and operates a main transmission natural gas pipe line extending from gas fields in the Texas Panhandle, near Amarillo, Texas, to Clayton, New Mexico;

(b) Colorado-Interstate Gas Company, a corporation organized and existing under the laws of the State of Delaware owns and operates a main transmission natural gas pipe line extending from Clayton, New Mexico, to the City of Denver, Colorado;

(c) Colorado-Wyoming Gas Company, a corporation organized and existing under the laws of the State of Delaware, owns and operates a main transmission natural gas pipe line extending from Littleton, Colorado, to Cheyenne, Wyoming;

(d) The main transmission natural gas pipe lines owned and operated by the Canadian River Gas Company, the Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company, as hereinbefore described, are so interconnected as to constitute, for the purposes of conducting an investigation, one continuous line extending from the Texas Panhandle, near Amarillo, Texas, to Cheyenne, Wyoming;

(e) Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company are

engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption, for domestic, commercial, industrial and other uses, and are, therefore, natural gas companies within the meaning of the Natural Gas Act:

(f) Pursuant to Section 4(c) of the Natural Gas Act and the Commission's Order No. 53; the Canadian River Gas Company on August 20, 1938, filed with the Commission its contracts and agreements covering the sale of natural gas to the Colorado-Interstate Gas Company and the Clayton Gas Company; the Colorado-Interstate Gas Company on August 19, 1938, filed with the Commission its contracts and agreements covering the sale of natural gas to the Public Service Company of Colorado, the Colorado-Wyoming Gas Company, the Pueblo Gas and Fuel Company, the City of Colorado Springs, the Citizens Utilities Company, the Arkansas Valley Natural Gas Company, and the Natural Gas Pipe Line Company of America; the Colorado-Wyoming Gas Company on August 20, 1938, filed with the Commission its contracts and agreements with the Cheyenne Light, Fuel and Power Company;

(g) On December 22, 1938, the City and County of Denver, Colorado, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a complaint (Docket No. G-118) alleging, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company is delivered and sold to the Colorado-Interstate Gas Company; that this gas is transported, delivered, and sold by the Colorado-Interstate Gas Company to the Public Service Company of Colorado, a corporation organized and existing under the laws of the State of Colorado; that the Public Service Company is a public utility engaged in the local distribution and sale of gas at retail to consumers in the City and County of Denver, Colorado, at rates which are greatly dependent upon the price paid by it to the Colorado-Interstate Gas Company; that the rates and charges for natural gas collected by the Colorado-Interstate Gas Company from the said

Public Service Company of Colorado are unreasonable, unjust, and discriminatory; that the Colorado-Interstate Gas Company sells natural gas at a much lower rate to other purchasers on both sides of the City gates of the City and County of Denver; said City and County of Denver petitions this Commission to investigate and determine the reasonable cost and charge for natural gas sold by the Colorado-Interstate Gas Company to the Public Service Company of Colorado at the Denver gate:

(h) On January 9, 1939, the Public Service Commission of the State of Wyoming, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a petition (Docket No. G-121), reciting, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company is delivered and sold to the Colorado-Interstate Gas Company; that this gas is transported, delivered, and sold by the Colorado-Interstate Gas Company to the Colorado-Wyoming Gas Company; that the Colorado-Wyoming Gas Company transports, delivers, and sells such natural gas to the Cheyenne Light, Fuel and Power Company, which is a public utility engaged in the local distribution and sale of gas at retail to consumers in the City of Cheyenne, Wyoming; that the rates charged by the Cheyenne Light, Fuel and Power Company are dependent in a large measure upon prices which it pays to the Colorado-Wyoming Gas Company for natural gas; that the rates and charges for natural gas sold at the City gate by the Colorado-Wyoming Gas Company are unjust, unreasonable, and discriminatory, resulting in an excessively high cost to the consumers in the City of Cheyenne; that the said Public Service Commission of the State of Wyoming petitions this Commission to determine and fix a just and reasonable rate for gas sold to the Cheyenne Light, Fuel and Power Company at the City gates of Cheyenne, Wyoming:

Wherefore the Commission finds that:

It is necessary and proper, in the public interest, and to

aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Federal Power Commission, on its own motion, into and concerning all rates, charges, classifications, rules, regulations, practices, or contracts of the Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company.

The Commission, on its own motion, orders that:

An investigation of the Canadian River Gas Company, Colorado-Interstate Gas Company, and Colorado-Wyoming Gas Company be and is hereby instituted for the purpose of enabling the Commission:

(1) • To determine with respect to each of said companies whether in connection with any transportation or sale of natural gas subject to the jurisdiction of this Commission any rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential; and

(2) If the Commission shall find that any such rates, charges, or classifications, rules, regulations, practices, or contracts are unjust, unreasonable, unduly discriminatory, or preferential, to determine and fix by appropriate order or orders just, reasonable, and non-discriminatory rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and enforced.

By the Commission.

LEON M. FUQUAY, Secretary.

Joint Answer of Respondents Canadian River Gas Company and Colorado-Interstate Gas Company.

Comes now Canadian River Gas Company and Colorado-Interstate Gas Company, respondents herein, and without waiving their joint and several petition to review the order of the Commission entered herein on March 14, 1939, docketed No. 1931, in the United States Circuit Court of Appeals for the Tenth Circuit, and without waiving their petition for a writ of certiorari from the Supreme Court of the United States to said Circuit Court of Appeals in said cause docketed in the Supreme Court of the United States, October Term, 1940, No. 433, and without waiving any of their other pleas or objections to the jurisdiction of this Commission, by way of answer to said order of March 14, 1939 and the order of September 13, 1940 also entered herein, alleges as follows:

I.

Canadian River Gas Company (hereinafter referred to as "Canadian River"), and Colorado Interstate Gas Company (hereinafter referred to as "Colorado Interstate"), are not natural gas companies within the meaning of the Natural Gas Act. The business of neither company is of the character intended to be regulated by said Act, and is not so affected with a public interest as to bring them within the price-fixing provisions or other terms of said Act.

Respondents say that the facts in support of their contention that the Commission has no jurisdiction over either of them, to determine, change, or fix rates, charges, classifications, rules, regulations, practices or contracts under which they sell natural gas, are as follows:

Prior to 1927, there had been general discussion in the City of Denver and consideration had been given by the Mayor, the City Council and other officials of Denver, as to the possibility of having natural gas brought to Denver from the Amarillo field in Texas.

At a special election held in Denver on February 8, 1927, the qualified electors, by a majority vote, granted to the Public Service Company of Colorado (hereinafter referred to as "Public Service"), which company had been engaged in manufacturing and distributing gas in Denver for many years prior thereto, a franchise to construct, maintain and operate an electric light and gas plant in Denver. This franchise was for a period of twenty (20) years and contained a special provision with respect to natural gas in Section IV-d, as follows:

"If at any time during the first ten (10) years of this franchise the Mayor and Council of the City after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, shall by majority vote of the Council with approval of the Mayor determine that it is feasible to bring natural gas to Denver and shall give notice to the Company of their findings, together with engineering information upon which such determination was based, and provided a fair and reasonable rate is established for such service, then within two years thereafter the Company shall make such supply available to the City. In the event of its failure so to do, then the Company shall pay, as a penalty, the sum of fifty thousand dollars (\$50,000.00) per year, for the then remaining years of this franchise that the Company remains in default.

"If, after the first ten (10) years of this franchise, a supply of natural gas is found to be available under the foregoing stipulation and conditions, and the City is willing to grant the Company a franchise for natural gas for a term of twenty (20) years, and the Company refuses to make such supply available, then the Company shall pay, as a penalty, the fifty thousand dollars (\$50,000.00) aforesaid during the then remaining years of this franchise that the Company remains in default."

Thereafter the Mayor and the City Council employed A. C. King, Engineer, of Chicago, Illinois, to make a thorough examination and investigation as to the feasibility

of bringing natural gas to Denver. Pursuant to said employment, said King made such investigation, and under date of August 10, 1927, reported the result thereof in the form of his findings and recommendation to the Mayor and City Council of Denver. In such findings and recommendations said King reviewed in detail the project as then proposed by parties then representing respondents herein which contemplated the construction of a pipe line to bring natural gas to Denver from the Amarillo, Texas, field, including the gate rate to be charged to Public Service, and said King concluded that a forty cent (40¢) gate rate was reasonable; that as a result of such investigation and report, and based thereon, the City Council by ordinance passed September 14, 1927, determined that it was feasible to bring natural gas to Denver under said terms. The ordinance in Section 1 provided:

"That after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith, upon the final passage, publication, and approval of this Ordinance by the Mayor, to deliver to said Public Service Company of Colorado a duly certified copy hereof, together with a verified copy of the 'Report on Proposed Natural Gas Rates for Denver' dated August 10, 1927, which was prepared, after investigation, by A. C. King, Consulting Engineer of Chicago, Illinois, and which said report constitutes the engineering advice and information upon which said findings and determination are based, and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had for particularity and notice of which is hereby given to said Public Service Company of Colorado in conformity to the provisions of said Section IV-c of said above mentioned Franchise."

In and by said ordinance of September 14, 1927, the rates to be charged by Public Service to its local consumers were fixed for the full unexpired term of said franchise, which term was for a period of twenty (20) years from and after its approval on February 8, 1927. Said rates to local consumers to be supplied by Public Service were fixed in said ordinance in contemplation of the 40¢ gate rate aforesaid.

After the enactment of said franchise, negotiations were continued between the parties representing Colorado Interstate and its associates, in the project of bringing gas to Denver as aforesaid, and the representatives of Public Service. Such negotiations culminated in an agreement between the parties interested in said project, namely, Southwestern Development Company, Cities Service Company and Standard Oil Company (N. J.), dated April 5, 1927, which agreement contemplated the formation by said parties of a company such as Colorado Interstate which, as hereinafter set forth, was so formed. Said agreement of April 5, 1927, expressly provided:

"It is agreed that a schedule and form of rates in the city of Denver substantially as follows contained in a reasonably workable ordinance duly enacted, shall be deemed to make the project profitably feasible and the agreement immediately effective:

\$2.00 for the first 1,000 cubic feet or less

.60 per thousand cubic feet for the next 9,000 cubic feet

.50 per thousand cubic feet for all over 10,000 cubic feet.

In case an acceptable rate ordinance is not secured in the city of Denver on or before the 1st day of July, 1927, the parties hereto or any of them may terminate participation herein and cancel any agreements made hereunder, each party thereupon to be free and without prejudice to act as if these stipulations and any agreements thereunder had never been made."

Said agreement of April 5, 1927 also contemplated as a condition to the feasibility of said project and as further security for the successful operation of said project, the procurement after private negotiation, of a few additional gas sales contracts. Said additional contracts, however, were not to jeopardize the supply of gas to Public Service for resale to its Denver customers.

Thereupon, and after the passage of the ordinance of September 14, 1927, fixing the rates to be charged by Public Service to its local consumers in Denver for the period of its franchise, negotiations were continued, and culminated in an agreement between Colorado Interstate and Public Service dated January 3, 1928.

Colorado Interstate and Canadian River were each organized under the laws of ~~the~~ State of Delaware for the purpose of this project. The Canadian River was expected to and subsequently did acquire gas leaseholds and gas wells on more than 300,000 acres of gas lands in the Amarillo field, drilled additional wells thereon, built gathering lines and other facilities, constructed a compressor station and a main pipe line to a point in New Mexico, near Clayton, New Mexico, at which point delivery of the gas was to be made to Colorado Interstate. Colorado Interstate was expected to and did subsequently construct pipe lines and compressor stations from the end of the Canadian River main pipe line to Denver, and other places in Colorado, and eventually made contracts as aforesaid for the sale of natural gas to distributing companies and industries in Colorado. The completion of this project to bring natural gas to Denver and other points in Colorado cost in excess of Twenty Million Dollars (\$20,000,000.00) and took place only by reason of the series of events hereinbefore and hereinafter related.

Said agreement of January 3, 1928 contained the terms and conditions and the price to be paid by Public Service to Colorado Interstate for natural gas for distribution in Denver and its environs for a term of twenty (20) years, with the right reserved in Public Service to discontinue

taking natural gas if it did not possess a franchise from said City and County of Denver after February 8, 1947.

At the time of making said contract with Public Service neither Colorado Interstate nor Canadian River had been engaged in the gas business, and neither then nor at any time subsequent held themselves out as willing or able to serve the public generally with natural gas nor to supply said commodity to any other customers than the limited number which each had under private contract. Neither has corporate authority in its charter to engage in the public utility business or to act as a common carrier, and neither has ever exercised any of the rights or privileges of a public utility or common carrier, or held itself out as such. Neither has claimed to possess and has never attempted to exercise the power of eminent domain, but each has acquired all of its property by purchase under private contract.

The Certificate of Incorporation issued to Canadian River by the State of Delaware provides as follows:

"Provided that nothing herein shall be construed to authorize the corporation to transport gas or oil for others as a carrier for hire or to sell gas or oil for others as a carrier for hire or to sell gas or oil except by special contract, or to constitute the corporation a common purchaser of gas or oil or a public utility corporation."

The Certificate of Incorporation issued to Colorado Interstate by the State of Delaware provides as follows:

"Provided that nothing herein shall be construed to authorize the corporation to transport natural gas for others as a carrier for hire or to sell natural gas for others as a carrier for hire, or to sell natural gas except by special contract, or to constitute the corporation a common purchaser of natural gas or a public utility corporation."

Respondents say that at the time of entering into said contract of January 3, 1928, Colorado Interstate was free

to enter into such contract or not, depending upon whether the terms and conditions and the prospects of its performance were satisfactory to it; that said contract was only entered into after the investigation and report made by the said King including his findings and recommendations which had been accepted and approved by the Mayor and Council; that said report approved the 40c M.c.f. gate rate; that thereafter the ordinance of September 14, 1927 approving the King report was passed, all of which was made known to Colorado Interstate, and that said report and said ordinance induced Colorado Interstate and Canadian River to undertake the project of bringing natural gas to Denver under the terms as aforesaid.

Respondents further allege ~~that were it not~~ for such inducements the contract of January 3, 1928 with Public Service would not have been entered into and the project of bringing natural gas to Denver and the other Colorado points served would not have been undertaken.

Said contract of January 3, 1928 was for a term of twenty (20) years from the date Colorado Interstate was ready to begin deliveries of gas, and the first delivery was made on or about June 23, 1928, subject to the right of Public Service to discontinue taking gas if it did not possess a franchise after February 8, 1947, as aforesaid. Neither Colorado Interstate nor Public Service assumed any obligation to sell or purchase gas after the expiration of said contract term.

Respondents say that while they relied principally upon said contract of January 3, 1928 with Public Service in the making of investments in excess of Twenty Million Dollars (\$20,000,000.00) to carry out the project, they also relied upon and had in contemplation prior to investing in said project a limited number of other private contracts. Such contracts limited in number and covering the sale of smaller quantities of gas were relied upon to make the project feasible and to guarantee, as aforesaid as far as possible and by means of such contracts, the protection of the capital ventured.

The other contracts of respondent, Colorado Interstate, in addition to the said contract of January 3, 1928, with Public Service for the sale of gas for resale, subsequently negotiated and filed with the Commission under objection to its jurisdiction and with full reservation of Constitutional rights, are as follows:

Customer	Date of Contract	Expiration Date
Arkansas Valley Natural Gas Company	November 27, 1929 October 1, 1931	June 23, 1948 June 23, 1948
Citizens Utilities Company	May 1, 1937	May 1, 1942
City of Colorado Springs	June 12, 1931	June 19, 1948
Colorado-Wyoming Gas Company	October 3, 1929	Sept. 28, 1948
Natural Gas Pipeline Company of America	October 15, 1931	Sept. 30, 1946; and thereafter at election of Buyer.
The Pueblo Gas & Fuel Company	January 3, 1928	June 21, 1948

None of the foregoing contracts ever would have been made except for the making of the contract with Public Service of January 3, 1928 which made possible the building of said natural gas pipe line.

Respondents say that with respect to gas sold by Colorado Interstate in Colorado, the operations of Colorado Interstate and Canadian River are carried on as a single enterprise under contractual arrangement between them.

The respondent, Canadian River, has sold gas only to one customer in Texas, to one customer in New Mexico, and to Colorado Interstate, under the terms of an agreement also dated January 3, 1928, for a term of twenty (20)

years, corresponding to the term set forth in said contract between Colorado Interstate and Public Service, as aforesaid.

The contracts of Canadian River, other than the one with Colorado Interstate as aforesaid, are as follows:

Customer	Date of Contract	Expiration Date
Amarillo Oil Company (For gas in excess of that purchased from other producers required for Panhandle Pipe Line Company, U. S. Zinc Company and customers in Amarillo)	January 3, 1928	June 23, 1948
Amarillo Oil Company (Requirements of, West Texas Gas Co.)	January 3, 1928	January 3, 1948
Amarillo Oil Company (For Dalhart)	June 19, 1928	April 14, 1943
(For Texline)		Sept. 23, 1943
Amarillo Oil Company (For Channing)	June 19, 1928	Nov. 16, 1943
Amarillo Oil Company (For Hartley)	Dec. 5, 1930	Nov. 27, 1945
Clayton Gas Company (Gas for Clayton, N. M.)	June 19, 1928	Sept. 2, 1943

The contract of respondent, Canadian River, with Colorado Interstate, dated January 3, 1928, and its contract with Clayton Gas Company, dated June 19, 1928, being interstate in character, have been filed with the Commission under objection to the Commission's jurisdiction, and with reservation of all Canadian Rivers' Constitutional rights.

The natural gas now being sold and delivered to customers in Colorado under said contracts is being used by the consumers in place of and against the competition of

manufactured gas, coal and oil, and other fuels. Upon information and belief, respondents state that most of said distributing companies have retained as standby plants, the plants and facilities theretofore used by them to manufacture gas out of coal. The production and use of natural gas was accomplished in competition with and in substitution for to a large extent; other kinds of available fuel, particularly coal, fuel oil, electricity and manufactured gas.

The States of Colorado and Wyoming have cheap and abundant supplies of coal, and such supplies of coal are available and are being supplied at each and all of the points of delivery of natural gas under respondents' contracts. Wyoming and Kansas and Colorado, to a smaller extent, have abundant supplies of oil, far in excess of the needs of the inhabitants of said States. From the Lance Creek Oil Field in Wyoming, the Rocky Mountain Pipe Line Company carries oil for hire to Denver, with a branch line to Cheyenne. Said oil pipe line supplies refineries in Cheyenne and in Denver. These refineries, as well as many others located in Wyoming and Kansas and a few more in Colorado, sell at retail fuel oil, and deliver the same by tank cars and trucks. In the State of Kansas and in Wyoming, and to a smaller extent in Colorado, natural gas fields have been discovered and developed and will enter into competition with respondents at the expiration of their contracts, as aforesaid. All of the natural gas sold by respondents under said contracts and being used or resold by respondents' customers is in competition with all of the above described and other miscellaneous kinds of fuel, all available in large quantities.

Under all the foregoing facts and for all of these reasons, respondents deny that their business or the business of either one of them is affected with a public interest; deny that either of them is a natural gas company engaged in the transportation and sale of natural gas within the true intent and meaning of said Natural Gas Act; assert that if said Natural Gas Act is construed to include either of them within its terms or to subject the business of either to the regulation of the Commission or is so interpreted to confer upon the Commission any jurisdiction, power or

authority to regulate the price, terms and conditions under which they sell, or either one of them sells, gas as afore-said, then said Act and all rules, regulations or orders promulgated and entered by the Commission thereunder, affecting either one of them, or both of them, are and will be null and void and unconstitutional, in that they deprive respondents of their vested rights and property and liberty of contract without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

II.

All of respondents' contracts hereinabove in subdivision I set forth are private and are not subject to change, modification, abrogation or impairment by substitution of regulated rates for contract prices, or otherwise. In support of this contention respondents adopt and by reference incorporate herein the facts hereinabove alleged in subdivision I of this answer, and particularly the allegations showing that each and all of said contracts were negotiated and entered into under the circumstances hereinabove set forth, and that each of said contracts was so negotiated and entered into long prior to the enactment of said Natural Gas Act. Respondents assert that it is not the true intent and purpose of said Act to operate retroactively so as to affect said contracts, and if said Natural Gas Act is interpreted to operate so retroactively, or so as to affect said contracts, or so as to permit the Commission to modify, change, impair or abrogate said contracts by substituting regulated rates for contract prices, then said Act and all rules, regulations or orders promulgated or entered by the Commission thereunder are, or will be, null and void, and unconstitutional, in that they impair respondents' contracts and deprive them of their vested rights and property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

III.

Any order of the Commission purporting to abrogate the contract prices of respondents will be void and unconstitutional for the reason that no "public interest" could be

or will be served by such abrogation and suspension. The abrogation and suspension of contract prices by so-called regulated rates can only operate to enrich the Public Service Company, Colorado-Wyoming Gas Company, and the other contract customers of respondents, at the expense of respondents. The suspension and abrogation of said contract prices will serve no "public interest" within the meaning of said Natural Gas Act.

IV.

Without waiving any of the foregoing pleas or defenses, but insisting upon each and all of them, respondents allege that none of their contract prices and none of their rules, regulations, practices or contracts are unjust, unreasonable, unduly discriminatory or preferential, within the meaning of said Act, or otherwise.

Order Fixing Date of Hearing.

It appearing to the Commission that:

(a) On December 22, 1938, the City and County of Denver, Colorado, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a complaint (Docket No. G-118) alleging, among other matters, that natural gas produced and gathered in the State of Texas by the Canadian River Gas Company is transported by said company without the State of Texas and is then sold and delivered by it to its affiliate, the Colorado Interstate Gas Company, at a point near Clayton, New Mexico; that this gas is then transported by the Colorado Interstate Gas Company through the State of New Mexico and into the State of Colorado and that a large portion of such gas is then resold by said Colorado Interstate Gas Company to an affiliate, the Public Service Company of Colorado, at the City gate of Denver, Colorado; that said Public Service Company of Colorado is a public Utility en-

gaged in the local distribution and sale of gas at retail to consumers in the City and County of Denver, Colorado, at rates which are greatly dependent upon the price paid by it to the Colorado Interstate Gas Company; that the rates and charges for natural gas collected by the Colorado Interstate Gas Company from the said Public Service Company of Colorado are unreasonable, unjust, and discriminatory; that the Colorado Interstate Gas Company sells natural gas at a much lower rate to other purchasers on both sides of the City gates of the City and County of Denver; and said City and County of Denver petitions this Commission to investigate and determine the reasonable cost and charge for natural gas sold by the Colorado Interstate Gas Company to the Public Service Company of Colorado at the Denver gate;

(b) On January 9, 1939, the Public Service Commission of the State of Wyoming, a State Commission within the meaning of the Natural Gas Act, filed with the Commission a petition (Docket No. G-121), reciting, among other things, that natural gas produced, gathered, and transported by the Canadian River Gas Company, is delivered and sold by said company to the Colorado Interstate Gas Company; that this gas is then transported, sold and delivered by the Colorado Interstate Gas Company at Livingston, Colorado, to the Colorado-Wyoming Gas Company; that the Colorado-Wyoming Gas Company transports such gas out of the State of Colorado and delivers and sells it at the City gate at Cheyenne, Wyoming, to the Cheyenne Light, Fuel and Power Company, a public utility engaged in the local distribution and sale of gas at retail to consumers in said City of Cheyenne, Wyoming; that the rates charged by the Cheyenne Light, Fuel and Power Company are dependent in a large measure upon prices which it pays to the Colorado-Wyoming Gas Company for natural gas; that the rates and charges for natural gas sold at the City gate by the Colorado-Wyoming Gas Company are unjust, unreasonable, and discriminatory, resulting in an excessively high cost to the consumers in the City of Cheyenne; that the said Public Service Commission of the State of Wyoming petitions this Commission to determine and fix a just

and reasonable rate for natural gas sold to the Cheyenne Light, Fuel and Power Company at the City gate of Cheyenne, Wyoming;

(c) On March 14, 1939, the Commission instituted an investigation (Docket No. G-124) of the Canadian River Gas Company, Colorado Interstate Gas Company and Colorado-Wyoming Gas Company, for the purpose of enabling the Commission (i) to determine with respect to each of said companies whether in connection with any transportation or sale of natural gas subject to the jurisdiction of this Commission any rates, charges, or classifications demanded, observed, charged or collected, or any rules, regulations, practices, or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential; and (ii) if the Commission shall find that any such rates, charges, or classifications, rules, regulations, practices, or contracts are unjust, unreasonable, unduly discriminatory or preferential, to determine and fix by appropriate order or orders just, reasonable, and nondiscriminatory rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and enforced;

(d) Said order instituting an investigation was duly served upon the said Canadian River Gas Company, Colorado Interstate Gas Company, and Colorado-Wyoming Gas Company:

The Commission orders that:

(A) Dockets Nos. G-118, G-121 and G-124 be and they are hereby consolidated for purposes of hearing thereon;

(B) A public hearing in these proceedings be held commencing October 28, 1940, at 10 o'clock a. m. in the Circuit Court Room, Federal Building, in Denver, Colorado, and at said public hearing, pursuant to the provisions of Section 50.63 of the Provisional Rules of Practice and Regulations under the Natural Gas Act the order of procedure will be for the Canadian River Gas Company, the Colo-

rado Interstate Gas Company and the Colorado-Wyoming Gas Company to open and close, and said opening shall consist in the presentation of their evidence relevant and material to the matters under the aforesaid investigation; and after said opening, the Federal Power Commission shall present its evidence, and thereafter, other participants may present their evidence; said order of procedure shall, however, be subject to such change or modification as the Examiner may find necessary or desirable;

(C) Interested State commissions may participate in said hearing, as provided in Section 67.4 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

LEON M. FUQUAY, Secretary.

At the opening of the hearing on October 28, 1940 before the Commission, it was stipulated and agreed, and ordered by the Examiner, that Colorado Interstate Gas Company and Canadian River Gas Company proceed with the hearing without waiving their pleas to the jurisdiction of the Commission, and that their answers filed with the Commission be incorporated into the record (Transcript of Testimony, Vol. I, p. 26).

1. Origin of the Project—Denver's Desire for Natural Gas and Its Grant of a Franchise to the Public Service Company of Colorado.

On January 6, 1927, the City Council of the City and County of Denver passed Ordinance No. 1, Series of 1927 (Ex. 23), entitled in part:

"An ordinance submitting to the qualified taxpaying electors of the City and County of Denver the question of granting a franchise to Public Service Company of Colorado, * * * to construct, * * * and operate a plant * * * for the * * * distribution of electricity and artificial and natural gas and to furnish, distribute and sell said products to the said City and County of Denver, and the inhabitants thereof, for light, heat and power, or other purposes, by means of pipes, mains, * * * and wires * * * over, under, along and across all streets, * * * public ways and places in the City and County of Denver, and fixing the terms and conditions thereof and providing for rates and standards of service; and providing for the calling and holding of a special election upon said question, * * *"

This proposed franchise was limited to a twenty-year term and required an approving vote of the electors under Denver's Charter, excerpts from which were introduced as Exhibit 27 herein. Section 277 of the Charter required the approving vote (Ex. 27, p. 3), and Section 278 limited the term to twenty years (Ex. 27, p. 3).

On February 8, 1927, the electors voted approval of the proposed franchise, introduced herein as Exhibit 24. This franchise will expire February 8, 1947, by reason of its own limitations (Ex. 24, p. 34) as required by the aforesaid provisions of the Charter (Ex. 27, p. 3). That franchise prescribed, with respect to manufactured gas then being furnished, a price to the consumer, without regard to use, of 90c per thousand cubic feet (Ex. 24, p. 32), with a heating value of not less than 400 Btu. per cu. ft. (Ex. 24, p. 33). It provided, with respect to natural gas in Section IV, the following (Ex. 24, p. 29):

"If at any time during the first ten (10) years of this franchise the Mayor and Council of the City, after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, shall by majority vote of the Council with approval of the Mayor determine that it is feasible to bring natural gas to Denver and shall give notice to the Company of their findings, together with engineering information upon which such determination was based, and provided a fair and reasonable rate is established for such service, then within two years thereafter the Company shall make such supply available to the City. In the event of its failure so to do, then the Company shall pay, as a penalty, the sum of fifty thousand dollars (\$50,000.00) per year, for the then remaining years of this franchise that the Company remains in default.

"If, after the first ten (10) years of this franchise, a supply of natural gas is found to be available under the foregoing stipulation and conditions, and the City is willing to grant the Company a franchise for natural gas for a term of twenty (20) years, and the Company refuses to make such supply available, then the Company shall pay, as a penalty, the fifty thousand dollars (\$50,000.00) aforesaid during the then remaining years of this franchise that the Company remains in default."

On September 14, 1927, the Denver Council passed Ordinance No. 178, Series 1927 (Exhibit 25). Section 1 found and provided:

"That after investigation and upon competent engineering advice, taking into consideration all the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith, upon the final passage, publication, and approval of this Ordinance by the Mayor, to deliver to said Public Service Company of Colorado a duly certified copy hereof, together with a

verified copy of the 'Report on Proposed Natural Gas Rates for Denver,' dated August 10, 1927, which was prepared, after investigation, by A. C. King, Consulting Engineer of Chicago, Illinois, and which said report constitutes the engineering advice and information upon which said findings and determination are based, and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had for particularity and notice of which is hereby given to said Public Service Company of Colorado in conformity to the provisions of said Section IV-c of said above mentioned Franchise."

Section 2 granted the right to Public Service to sell natural gas in place of manufactured gas under a schedule of rates "*for the unexpired term of said franchise*" (that is, until February 8, 1947. (Ex. 24, p. 34.) The gas was to have a heating value of not less than 800 Btu. per cubic foot and the rates were: For the first 400 cu.-ft. or less, 90c; for the next 600 cu. ft., 15c per 100; for the next 1,000 cu. ft., 12c per 100; for the next 1,000 cu. ft., 7½c per 100; for the next 7,000 cu. ft., 6c per 100; for the excess above 10,000 cu. ft., 5c per 100.

Section 3 recited:

"Under said Franchise said Public Service Company of Colorado is required to supply said City and County and its inhabitants with natural gas as long as the same is available, during the unexpired term of said Franchise, and a reserve acreage of gas leaseholds in the State of Texas, from which natural gas may be supplied sufficient for the uses of said City and County of Denver and its inhabitants during the unexpired term of said Franchise, by contract, has been rendered available to said Public Service Company of Colorado.
• • •"

Section 4 provided in part:

"It is further determined that the rates to be charged by said Company for natural gas service to industrial users for heating, manufacturing and power purposes in the City and County of Denver for the term of said

Franchise may be lower and different from those charged for domestic purposes and the Company shall have the right to contract with industrial users for the sale of such natural gas, provided that all such contracts contain a 'cut-off' clause which recognizes the preferred right of the domestic users over the industrial users."

Respondent offered said King Report, Exhibit 26, as an official document of the complainant Denver, filed according to law and upon which the City respondents acted and relied. On page 8 of this report, King found the project to be feasible on the basis of a 40c per Mcf. gate or town border rate. This exhibit was refused (Vol. II, p. 171).

EXHIBIT 26.

Synopsis.

Supply.

Natural gas supply for Denver from the Amarillo field is feasible and will be of great advantage to Denver. Indications are that the available gas in the acreage to be reserved for this project will be sufficient for at least 20 years.

Cost of Construction.

The estimated initial cost of the entire pipe line project is \$15,523,837 exclusive of gas wells and leases. The investment will have to be increased from time to time as gas sales increase and additional compressor stations, gas wells and gathering lines are needed.

Public Service Co. Additional Investment.

The Public Service Co. will have to spend about \$1,750,000 to adapt its system for natural gas of which about \$1,100,000 would be chargeable to capital investment.

Proposed Rate.

The proposed rate will not return an excessive profit on the entire investment from gas field to Denver consumer, the estimate averaging 7 $\frac{3}{4}$ % over a ten year period.

The proposed rate would increase present gas bills where the consumption of artificial gas now is less than 2,200 cu.

ft. per month, but decrease those where the consumption is more than that amount.

Recommended Rate.

A rate is recommended which would not increase any gas bills and would reduce all bills now less than for the minimum consumption.

This rate is:

For the first 400 cu. ft. or less of gas per month.....	\$.90
For the next 600 cu. ft. of gas, used per month, per 100 cu. ft. ....	.15
For the next 1,000 cu. ft. of gas used per month, per 100 cu. ft. ....	.12
For the next 1,000 cu. ft. of gas used per month, per 100 cu. ft. ....	.075
For the next 7,000 cu. ft. of gas used per month, per 100 cu. ft. ....	.06
For the excess above 10,000 cu. ft. of gas used per month, per 100 cu. ft. ....	.05

Problem for Investigation.

The clause in the franchise granted to the Public Service Co. of Colorado by vote of the taxpayers on Feb. 8, 1927, compels the grantee under penalty of \$50,000 per annum, to furnish natural gas to the City and County of Denver, provided: (a) that after investigation that it is feasible to do so, and shall notify the company to that effect, submitting the engineering data on which said finding is based; (b) that a fair and reasonable rate is established for such service.

The fact that the proposition to supply natural gas has been submitted, disposes of the first condition, leaving only the question of the establishment of a fair and reasonable rate.

A fair and reasonable rate is defined to be a rate which will yield a fair return on the investment necessary to furnish the service and will not subject the rate payers to unreasonable charges.

In the present case, two corporations are involved, one

furnishing the gas to the City limits and the other distributing it to the consumer. The consumer is not particularly concerned with how the profits are to be divided between them, but is vitally interested that the rate he pays will earn no more than a fair return on the total investment necessary to furnish the service from the gas field to his gas consuming appliances. However, in the actual procedure of the investigation it is necessary to consider production and distribution separately as well as the whole proposition as a unit.

Available Gas Supply.

It is proposed to bring in gas from the Amarillo, Texas, gas field. This gas and oil field extends from the South Eastern part of Hartley County in a generally southeasterly direction through portions of Moore, Potter, Hutchinson, Carson, Gray and Wheeler counties, Texas. The total length of the known productive area is over 100 miles and varies from about 10 to 30 miles in width, and exceeds 1,200 square miles in area. The oil producing area lies chiefly in the Hutchinson County portion of the territory mentioned. Over 50 gas wells have been *complete* within the gas area in addition to these in the proven oil area, and no wells in the proven gas area are dry holes except those which were not drilled into the known productive level. Gas is found in one to five or six beds of varying thickness. This field is probably the largest natural gas reservoir now within the United States. (See Diagram 1). Competent geologists have estimated the net recoverable gas reserves of this area at 2,500 billion cubic feet.

Gas has also been found in a few wells in Texas County, Oklahoma Panhandle district about 70 miles north of the Amarillo field, but this area has not been sufficiently developed to permit it to be classed as of major importance.

The known gas reserves mentioned above together with the possible productive areas in Southeastern Colorado and Northeastern New Mexico seem to assure at least a 20 year life for the proposed undertaking to supply natural gas to Denver, Colorado Springs and Pueblo. This area is now or shortly will be supplying gas to Amarillo, Lubbock, Plainview, Wichita Falls and other Texas cities, and a part of the requirements of Kansas City, and Wichita.

and will probably supply a portion of the gas to several Oklahoma Cities.

The total area held by the interests controlling the project which is known as the Colorado Interstate Gas Company is in excess of 350,000 acres, of which approximately two thirds is in the proven gas area. It is stated that this acreage will be held in reserve for this project and for the city of Amarillo which it now supplies.

From information now available it does not appear practicable to supply Denver over a 20 year period, with natural gas from other fields.

Quality of Gas.

The heating value of the gas produced from the area held for this project averages about 1,100 B.T.U. Losses in compression and transmission will reduce the heating value of gas delivered to Denver to approximately 1,070 B.T.U. at standard conditions or 875 B.T.U. as actually supplied to the consumer, the difference being accounted for by the fact that owing to the altitude, the gas has about 17% less density than at sea level which is the standard basis of measurement. This heating value is 2.65 times the heating value of the manufactured gas now supplied in Denver, which is 330 B.T.U.

The gas from the wells on the leases which will supply the Colorado Interstate Gas Company is free from sulphur or other objectionable elements, and like nearly all natural gas is practically non-poisonous. Much of the gas produced in connection with oil wells in the eastern part of Moore County and Western part of Hutchinson County contains sulphur in objectionable amounts. (See Diagram I). This gas is used in the production of casing head gasoline and carbon black.

Pipe Line Project.

In addition to supplying Denver and its environs it is proposed to furnish gas for general distribution in Colorado Springs and Pueblo and to the Colorado Fuel & Iron Co.'s plant at Pueblo and to the Portland Cement plants near Canon City. The project includes a 22" diameter pipe line from the compressor station in the field to a point about

10 miles east of Pueblo, passing through the Northwest corner of Texas and the Northeast corner of New Mexico. From that point a 20" line will be laid to the City limits of Denver, passing about 7 miles east of Colorado Springs. Pueblo and Colorado Springs will be supplied by branches from the main line. (See Diagram 2). A compressor station will be built at the field end of the line to increase the gas pressure for transmission. As the load increases, additional compressor stations will be built and equipment added to existing stations. During the second year of operation it is proposed to build a station near Pueblo and later, one between the field and Pueblo. As the rock pressure in the field declines, one or more stations may have to be built in the field to act as gathering stations, taking gas from the wells and delivering it to the main compressor station.

At the main compressor station it is planned to construct a gasoline absorption plant to remove all gasoline from the gas as it is deleterious to the type of joint used in the pipe line construction. The amount of gasoline obtainable from this gas is not sufficient to warrant the construction of a recovery plant except as a means of reducing the maintenance of the main pipe line. The reduction in heating value of the gas due to the removal of the gasoline content will be about 30 B. T. U. per cubic foot (at standard conditions), and is taken into account in the heating value figures previously mentioned.

Proposed Rates.

The rate at which the Public Service Co. of Colorado proposes to furnish natural gas to Denver consumers is as follows:

(a) For all gas for domestic or preferred commercial service, the following net rate:

For the first 200 cu. ft. or less of gas per month.....	\$1.50
For the next 2,800 cu. ft. of gas used per month,	
per 100 cu. ft. ....	.075
For the next 7,000 cu. ft. of gas used per month,	
per 100 cu. ft. ....	.060
For the excess above 10,000 cu. ft. of gas used	
per month, per 100 cu. ft. ....	.050

(b) Industrial customers may be supplied under special contracts carrying a provision for cutting off such customers in event of interference of supply of gas to domestic users. These contracts will probably be as low as 20 cents per thousand for very large users during the first five years.

The Colorado Interstate Gas Co. proposes to supply gas to the Public Service Co., for domestic and commercial consumption at 40 cents per thousand cu. ft. at the Denver City limits. For gas sold to industrial users at low rates, the Pipe Line Co. will receive 85% of such gross receipts. Under these industrial contracts domestic consumers will have preference in case of emergency or shortage of gas.

A contract has been made to supply gas to the Colorado Fuel & Iron Co., at Pueblo, contingent upon construction of the pipe line. This contract is to run for a period of ten years and specifies a rate of 16 cents per thousand cu. ft. for the first five years, and 18 cents for the next five years. It is not intended to use the gas for boiler fuel but to replace producer gas in the rail mill, soaking pits and open hearth furnaces, the average daily consumption being estimated at 12,500,000 cu. ft. The contract also provides that in cases of emergency or temporary shortage of gas, that the demands of domestic consumers may be given preference except that gas needed to complete certain work then in jeopardy shall not be cut off. This contract is of material value to the proposition in that it assures a considerable volume of business during the early years when the retail business is being built up.

The Pipe Line Co. also proposes to furnish gas to the local distributors in Colorado Springs and Pueblo at the same price as to the Public Service Co. in Denver. Other large industrial consumers within reasonable distance will probably be obtained.

Gas Consumption.

The estimated annual gas sales at the various points along the pipe line where it is expected to market gas are shown in Table 1, covering a period of ten years from the time the project begins operation. These estimates are close to those prepared by the Pipe Line Company, the fig-

ures herein being slightly higher for domestic and lower for industrial consumption. Table 2 shows the estimated maximum day demands for each year of the same period.

Cost Estimates.

In the investigation of the project a field inspection was made of the entire proposed route of the pipeline together with compressor station sites, to determine the character of the ground, contours extent of cultivation along the right of way etc. No unusual construction problems will be encountered, the most difficult being the crossing of the Arkansas River near Pueblo.

Detailed estimates of cost were made covering all labor, material, actual overhead expenses and contractors' profit. As no specifications for the work have yet been prepared these estimates were made after conferences with the engineers who will have charge of the construction so that the same would be in accord with the work as planned. The construction program contemplates that all material will be purchased and delivered to the contractors by the Pipe Line Co. The figures also include an allowance for interest during construction of 5% for the Pipe Lines and 2 1/2% for compressor stations. The investment in compressor stations and field lines from the wells will have to be increased from time to time with increase in load.

A summary of the investment by years is shown in Table 3. An allowance for working capital has also been included. While it is small in amount compared to the total investment, it is sufficient for at least 2 months operating expenses, exclusive of gas royalties and similar expenses which will not have to be met before the income is received from the same gas.

Allocation of Investment.

In addition to considering the project as a whole it was deemed advisable to ascertain if the proposed set up would work out by allocation to Denver its proper share of investment and expenses. The pipe line investment between Denver and Colorado Springs is chargeable to Denver business exclusively. That portion between Pueblo and Colo. Springs is divided between Denver and Colorado

Springs in proportion to the respective use. Similarly the line investment from the wells to Pueblo was allocated to Denver in the proportion of its use to the total. Investment in compressor stations was allocated along with the sections of pipe line which they serve. The maximum day demands were used in determining the ratios, rather than the annual consumption, as the lines and compressor stations must be built to serve these peak demands. In a long pipe line of this character it is unnecessary to take account of hourly peaks as in electric plants because the storage capacity of the line is sufficient to take care of hourly fluctuations.

At the Denver terminal of the line a pressure reducing and measuring station will be built, connecting with the Denver distribution system.

The total investment and the amount chargeable to Denver on the basis of the above allocation is shown in Table 3.

Pipe Line Revenue and Expense.

Estimates of revenue from sales of gas to distributing companies and others, based on the consumption estimates previously mentioned are shown in Table 4.

Estimates of Expenses and Net Earnings, available for Return on Investment, Retirement Reserve, etc., are shown in Table 5, for Denver business only and in Table 6 for the entire project. The same allocation basis was used for operating expenses as for investment in the figures for Denver only.

The credit shown for gasoline produced is net after operating and fixed charges on the gasoline plant. Fixed charges are considered as an expense item as the cost of the plant has not been included in the estimate of investments.

Valuation of Gas.

The project will include approximately 250,000 acres of gas leases in proven territory which of course have considerable value.

In the Pipe Line Co.'s valuation set up these leases have been included at \$11,000,000, this amount being determined on the basis of 1c per thousand feet for the estimated re-

coverable gas. This method of valuation has not met with favor by courts and utility commissions for several reasons and therefore is not accepted in this case. The general rule is to value the leases either at actual cost, or at the market value where leases were acquired prior to exploitation of the field. Another method of treatment frequently employed is to consider the production end of the business as if it were separate and distinct and to establish a market value for gas at the mouth of the well. On this basis gas production is considered a commercial rather than a public utility undertaking. After some study of the situation, this basis was adopted for this report.

This mouth of the well price must be sufficient to induce capital to hold a large block of acreage which is essential to a pipe line project of this magnitude, and therefore must include all carrying charges, royalties, drilling and maintenance costs, depletion and retirement charges. Owing to the fact that practically no gas is being purchased in this field for pipe line purposes at present, there is no established market price.

Giving due consideration to all facts and to the history of gas prices in other fields, it is considered that a fair price would be 7 cents at the beginning increasing at about the rate of $\frac{1}{4}$ c per year for a 10 year period. It is quite probable that some gas can be purchased in the beginning from individuals for about one-half of the figures mentioned but probably not in sufficient quantity nor on fixed terms covering a period which would warrant the investment of upwards of \$20,000,000 on this project. No attempt has been made to set up figures for longer than 10 years, though it is believed that, if the field proves as productive as indicated, gas prices will not much exceed 10c for a considerable time thereafter. Doubtless there will be some increase in the immediate future as the large quantities of gas available at lower prices are attracting the pipe line companies now in the Oklahoma and Texas fields farther east and there will be some competition for the available gas.

Retirement Reserve.

The amount set up for retirement reserve has been estimated at 4% on the entire investment or about 4 $\frac{1}{2}$ % on the depreciable property. It is believed that this will over a

period of years, be sufficient for all necessary replacements in addition to current maintenance provided in the operating expense estimate, although it is somewhat lower than the amounts usually set up by the pipe line companies.

Net Return.

The return on the investment in the pipe line project is shown in Table 5, as estimated on the basis of Denver business only, and in Table 6 for the entire project including the service to the Colorado Fuel and Iron Co. As the net return in the latter instance is somewhat higher, it is evident that the sale of gas to large users on a wholesale basis which have a very evenly distributed consumption, is a distinct asset to the project. Furthermore, this fact tends to decrease rather than increase the price of gas to Denver. For the ten year period the average net earnings are estimated to be $10\frac{1}{4}\%$ on the average investment for Denver business only. This is not considered unreasonable, after giving due consideration to all factors and particularly to the fact that the Public Service Co. is not to guarantee to purchase any specific amount of gas and could, if cheap gas should become available near Denver, purchase and distribute it there. In such event Denver consumers would benefit as the city has the power to regulate the rates, which are based on actual cost.

Comparison of Town Border Rates.

In comparison of the town border rates in other cities the 40 cent rate offered appears low (See Table 10) but the well prices of gas are generally much higher in the other fields, averaging about 18 cents in Ohio, 25 cents in Pennsylvania, 17 cents in West Virginia and 10 cents in Oklahoma.

Adaptation of Denver Plant to Natural Gas.

In practically all large cities which have been supplied with artificial gas, it is necessary to make rather extensive changes in the distribution system to adapt it to natural gas. Where the natural gas rate is materially lower for the same amount of heat furnished, the volume of gas will increase rapidly necessitating greater capacity in the distribution system. The point of supply of natural gas usually must be located some distance from the artificial gas plant, which requires a re-arrangement of the system or its equiva-

lent. In Denver both of these requirements can best be met by building a high pressure loop feeder main around the outer part of the city, tying into the present distribution system at various points, including the present gas holder stations. At these tying in points the pressure will be reduced and maintained constant by regulators. Extensions to the high pressure system with additional regulator stations will be constructed from time to time to meet increased demands.

The introduction of natural gas into a distribution system with lead and yarn pipe joints results in a marked increase in gas leakage. This is probably due to the fact that artificial gas carries into the system small amounts of tar and oils which keep the yarn moist and act as a seal at other points where gas might escape. Natural gas is dry and tends to absorb the oils and dry out the packing, thus increasing the leakage. Pipe with joints of this type is standard construction for artificial gas systems, and about 85% of the mains in Denver are so constructed. Natural gas practice is to use steel pipe with coupled or welded joints.

The only effective means devised to date to remedy the excess *leadage* is to install lead clamps at each joint in the mains which are spaced approximately 12 ft. apart. It is estimated that this work in Denver would cost \$788,100, and would require nearly two years to complete. A portion of this amount is chargeable to expense and the balance to capital account.

The introduction of natural gas would require changes and adjustments in all gas using appliances on account of the much lesser volume of gas required to furnish the same heat. The Public Service Co. proposes to do this work at its own expense, estimated at \$75,000.

A summary of the estimated additional investment by years together with the total gas plant investment is shown in Table 7.

Included in the total investment figures is the present gas making plant. By replacing the coal gas plant with modern equipment and continuing to furnish the present quality of artificial gas, the company can increase the net earnings at

once to about the same amount as is estimated would result during the fourth year after the introduction of natural gas. The investment required for the improved artificial plant is about \$500,000 whereas the natural gas investment, as shown by Table 7, is about \$1,750,000, to realize the same net earnings. However, with the latter expenditure, greater earnings can be realized during the following years. It seems fair, therefore, to include the present plant in the valuation and allow a return on it for several years after the first four to compensate for the lesser earnings in these years. It should not be carried in the capital account permanently but amortized as rapidly as circumstances will permit.

Estimate of Gas Consumption and Revenue (Denver).

Estimate of number of consumers of various classes, the total annual gas consumption of each class, and the revenue for ten year period are shown in Table No. 8. Estimates of gas consumption for house heating were based on the data available for houses now heated in Denver by artificial gas. The estimates do not include any of the suburban territory outside of Denver which are not at present supplied with gas. Revenue estimates are on proposed rates.

It will be noted that the gas estimates for house heating are a large proportion of the total, as the proposed rate is one which tends to encourage this class of business. The number of such customers as shown in the estimate is somewhat greater than that estimated by the Public Service Co.

Heating Cost—Gas vs. Coal.

In connection with the preparation of the estimates, considerable study was given to the cost of house heating by gas, at the proposed rate as compared with coal. The results indicate that under average conditions the cost of heating with gas should not exceed the cost with coal by more than about 15% and in some cases, less, depending on the kind of coal used. This is based on the assumption that the house holder is already a gas consumer so that the gas used for heating will practically all be billed at the low step in the rate, and that a reasonably efficient gas burner is installed.

In making comparisons of heating costs after gas has been

installed, the following facts should not be overlooked. Owing to the much greater convenience of gas, it will be used at times when only a small amount of heat is needed, whereas under similar circumstances the house holder would not go to the trouble to start a coal or wood fire. Constant temperature can be maintained with gas without attention, which is not the case with coal. As a result, the tendency is to maintain a higher average temperature with gas which of course tends to increase the fuel consumption. The above comparison is based on equal temperature being maintained. The advantages of convenience, cleanliness, labor saving and ease of control will doubtless lead many to use gas for heating even at some increase in cost.

Estimates of Operating Expenses and Interest Return (Denver).

Estimate of operating expenses and net earnings for the ten year period are shown in Table 9. The adaptation of the system to natural gas, will, as previously mentioned necessitate considerable increase in distribution and customer expense, particularly in the early part of the period. New business expense also must be largely increased in order to market gas in sufficient quantity in the early part of the period to insure success to the undertaking. The estimated net earnings before reserve show a deficit for the first year—gradually increasing to approximately the same figure as the artificial gas plant would show after four years, and then increasing. After deducting retirement reserves based on 1.8% of the depreciable property as set out in the artificial gas investigation in 1926 the net return on investment increases from a deficit in the first year to 8½% in the tenth year, the weighted average for the period being slightly more than 5½%. Corresponding estimates prepared by the Public Service Co. show a materially lower net revenue, the average for the first five years, before reserves being only \$218,967 per annum. The corresponding estimate for this report averages \$504,840, and for the ten year period \$876,636 per annum. The company did not extend their estimates beyond the first five years. The difference in the figures results from a greater estimated gas consumption, and somewhat less expense than the company's estimates.

Comments on Rate Proposed by Public Service Co.

While the estimates show that the proposed rate will not yield an excessive return for the first ten years of the period, it is believed that a change in the rate, lowering the initial charge of \$1.50, would be very desirable. The revenue lost by reduction of the initial charge could be made up by some increase in the first steps of the rate, in preference to a reduction in the latter steps. In order to obtain a satisfactory volume of house heating, the average rate from 15,000 cu. ft. monthly consumption up must be kept low. Any adjustments in the town border rate for gas should be reflected in the rate to the consumer.

In comparison of the present and proposed rates as shown on Diagram 5 it is of interest to note that where the present consumption of artificial gas is 2200 cu. ft. or less, the corresponding bill for natural gas will be increased, but where it now exceeds 2200 cu. ft. the bill for natural gas will be lower than with artificial.

Conclusions.

Considering the pipe line and the distributing systems as a single unit, which it would be necessary to do if the Public Service Co. were themselves to bring in the gas, the estimated average net earnings for the 10 year period are 7 $\frac{3}{4}$ % on the average total investment with the company's proposed rate. Should a similar proposal be made by an entirely new concern, to come into Denver and distribute natural gas from the same sources, that figure would represent what it could expect to average on its investment. It is evident, therefore, that the proposed rate will not yield more than a fair return on the entire property.

In discussion of the situation with the Mayor and Manager of Improvements and Parks, the following rate has been suggested as being more desirable as it will not result in the increase of any bills for the same service after the change to natural gas and will reduce all except the minimum bills.

For all gas for domestic or preferred commercial service, the following net rate:

For the first 400 cu. ft. or less of gas per month.....	\$.90
For the next 600 cu. ft. of gas used per month, per 100 cu. ft. ....	.15
For the next 1000 cu. ft. of gas used per month, per 100 cu. ft. ....	.12
For the next 1000 cu. ft. of gas used per month, per 100 cu. ft. ....	.075
For the next 7000 cu. ft. of gas used per month, per 100 cu. ft. ....	.06
For the excess above 10000 cu. ft. of gas used per month, per 100 cu. ft. ....	.05

Comparison of bills under this rate and that proposed by the Public-Service Company are shown on Diagrams 3, 4 and 5.

It is evident that the above rate will reduce the revenue somewhat below that from the rate proposed by the company although over the entire period the difference would be small in amount.

The Coal Situation.

Coal operators have expressed much fear that the proposed pipe line project will take away the greater part of their business in the State and especially in Denver. That their opposition is ill advised is shown by the propaganda which they issued showing how much cheaper coal is than gas for the ordinary householder and therefore it is much to be preferred. At the same time they site the magnitude and importance of the coal industry in Colorado and implying that it will be subject to dire disaster if natural gas is brought in. As a matter of fact, based on the anticipated consumption of gas five years after its introduction, the coal displaced by it in Denver will not be more than approximately 25 % of the total use. The corresponding figure for the entire state would be only about 8% or 800,000 tons. Of this amount about 220,000 tons reduction is due to the use of gas by the Colorado Fuel & Iron Co. and would not affect the general market situation.

Gas cannot be sold in Denver cheap enough to displace slack coal or screenings used in large power or heating plants with stoker fired boilers. It will displace coal in industrial processes only where precise heat control and ab-

sence of deleterious elements in the fuel result in a better product, although frequently at some increase in cost as compared with other fuels.

If gas can be had on terms outlined herein it would be of much greater economic advantage to Denver than the retaining of 25% or less of the coal business. That a vastly greater number of people would be benefited, is self-evident.

The coal interests plea is nothing new. When natural gas was first brought to Pittsburgh many years ago the coal miners went so far as to cut off the pipe line, fearing it would deprive them of their livelihood. Yet today more coal is mined in Pennsylvania than ever. Nor has natural gas had any appreciable effect on the coal industry in Cleveland or Cincinnati. For house heating and many other uses oil is now a real competitor of coal and probably would displace nearly as much coal as gas will if made available.

TABLE NO. 1.

Exhibit No. 26

COLORADO INTERSTATE GAS COMPANY

ESTIMATED GAS SALES IN M. CU. FT. PER YEAR

SALES TO DISTRIBUTING COMPANIES

OVER

All except Industrial
Industrial
Total

1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
2385218	3505955	11,08280	5167850	5789810	6177100	6596680	6927900	7198060	7397910
500000	1500000	2250000	2700000	2300000	2370000	2410000	3000000	3005000	3005000
2885218	5005955	13,33280	7867850	8089810	8547100	9006680	9927900	10203060	10402910

COLORADO SPRINGS

All except Industrial
Industrial
Total

1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
212000	332100	479900	591000	675000	789000	747000	765000	783000	801000
80000	100000	100000	100000	100000	100000	100000	100000	100000	100000
292000	432100	579900	691000	775000	889000	847000	865000	883000	901000

DENVER

All except Industrial
Industrial
Total

1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
169600	208000	378000	485000	580000	639000	660000	695000	720000	747000
100000	125000	150000	150000	150000	150000	150000	150000	150000	150000
269600	333000	528000	635000	730000	789000	810000	845000	870000	897000

PEAKLINE SALES

Co. Fuel & Iron Company
San City Line
Other Industrial Sales
Domestic Sales
Total.

1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
3750000	3750000	3750000	3750000	3750000	3750000	3750000	3750000	3750000	3750000
2200000	2200000	2200000	2200000	2200000	2200000	2200000	2200000	2200000	2200000
100000	100000	150000	150000	150000	150000	150000	150000	150000	150000
120000	176000	231000	278000	315000	321000	333000	312000	351000	360000
6170000	6226000	6331000	6578000	6415000	6421000	6433000	6312000	6451000	6468000

GRAND TOTAL SALES

1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
9556818	12077353	11,091180	12563050	12517810	17069100	17632880	18097900	18107060	18660310

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photographed because it is
very tightly bound.

TABLE NO. 2

Exhibit No. 26

ESTIMATED PEAK DAY DEMANDS (M.GU.FT.)

	1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
DENVER										
All except Industrial	15400	25300	32600	38700	41200	47000	49500	51500	53000	55200
Industrial	2900	5500	7900	9500	9800	10000	10300	10500	10500	10500
Total	18300	30800	40500	48200	51000	57000	59800	62000	63500	65700
COLORADO SPRINGS										
All except Industrial	1380	2300	3200	4000	4500	4800	4900	5060	5200	5300
Industrial	280	330	330	330	330	330	330	330	330	330
Total	1660	2630	3530	4330	4830	5130	5230	5390	5530	5630
FUNO										
All except Industrial	1100	1800	2100	3200	3900	4200	4400	4600	4850	5100
Industrial	330	420	500	500	500	500	500	500	500	500
Total	1430	2220	2600	3700	4400	4700	4900	5100	5350	5600
PIPE LINE SALES										
Colorado Fuel & Iron Co.	12500	12500	12500	12500	12500	12500	12500	12500	12500	12500
Canon City Line	7300	7300	7300	7300	7300	7300	7300	7300	7300	7300
Other Industrial	330	330	500	500	500	500	500	500	500	500
Domestic	300	1110	1300	1770	2050	2110	2170	2230	2240	2350
Total	20930	21270	21600	22070	22350	22410	22470	22530	22570	22650
GRAND TOTAL	142380	56920	68730	78300	85580	89210	92100	95620	96970	99580
Power Ratio										
to Denver & Colorado Springs	.917	.921	.920	.918	.918	.917	.918	.921	.920	.921
to Total	.632	.641	.639	.646	.631	.639	.647	.654	.653	.660

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photographed because it is
very tightly bound.

TABLE NO. 3

Exhibit No. 26

TOTAL INVESTMENT AND PORTION ALLOCATED TO DENVER
YEARS

		1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
Grand Total Investment Exclusive of Branch Lines Amount Allocated to Denver		\$14667078	\$15213403	\$15213403	\$16113063	\$16195293	\$16195293	\$16195293	\$16195293	\$16195293	\$16195293
<u>Main Pipe Line</u>											
Merile to Pueblo	\$9015717	3894790	4277903	5310257	5553602	5608917	5761043	5833169	5396279	5205295	5950373
Pueblo to Colorado Springs	1201722	1179184	1179184	1179184	1179184	1179184	1179184	1179184	1179184	1179184	1179184
Col. Spgs. to Denver	1976279	1976279	1976279	1976279	1976279	1976279	1976279	1976279	1976279	1976279	1976279
	12273713	7050253	8032965	8165720	8709115	8841300	8916506	8988632	9051712	9060758	9105836
Compressor Station (Denver)	33364	33364	33364	33364	33364	33364	33364	33364	33364	33364	33364
Compressor Station Yrs.											
Merile Comp. Sta. 1	504445	217920									
2 & 3	677102		366355	390060							
4	927077				571079						
5 to 10	1012397					657753	666092	674431	601720	682770	687902
Chamarron "	562105				316257						
4	617765					389810	394752	399694	404018	404636	407725
Pueblo "	403508		371301	371301							
"2 & 3	461248				421348						
4	461248					421348	421348	421348	421348	421348	421348
5 to 10		217920	737056	770161	1381884	1177911	1185192	1192473	1510094	1511754	1520055
Field Lines											
1 to 4	1715551	744118	928113	1010460	1050779						
5 to 10	1926801					1215811	1231226	1246640	1260128	1262055	1271689
Working Capital	11,0000	60480	75740	82160	86240	88340	89460	90580	91500	91700	92100
Total Allocated to Denver		\$ 8103135	\$ 9807839	\$ 10362165	\$ 11227212	\$ 11653806	\$ 11755738	\$ 11657689	\$ 11546836	\$ 11959631	\$ 12023314
Allocated to Denver		.5525	.6134	.6798	.6968	.7065	.7127	.7189	.7243	.7250	.7289

TABLE NO. 1

Exhibit No. 26

COLORADO INTERSTATE GAS COMPANY ESTIMATED YEARLY REVENUE

	1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
DENVER										
III except Industrial @ 10%	\$ 930087	\$ 1102373	\$ 1763312	\$ 2067110	\$ 2319936	\$ 2170810	\$ 2638672	\$ 2779160	\$ 2879224	\$ 2958936
Industrial @ 25 1/2%	51000	102000	153000	191250	201000	209100	211200	216750	218025	218025
Industrial @ 17%	51000	107000	230500	331500	310000	318500	357000	365500	365500	365500
Total	\$ 1032087	\$ 1691373	\$ 2196812	\$ 2589890	\$ 2859936	\$ 3089110	\$ 3209872	\$ 3361110	\$ 3462749	\$ 3518161
DENVER SPRINGS										
III except Industrial @ 10%	81800	132960	191960	236100	270000	291600	290800	306000	313200	320100
Industrial @ 15%	12000	15000	15000	15000	15000	15000	15000	15000	15000	15000
Total	\$ 96800	\$ 147960	\$ 206960	\$ 251100	\$ 285000	\$ 306600	\$ 315800	\$ 321000	\$ 328200	\$ 335100
WILCO										
III except Industrial @ 10%	67010	119200	118000	191000	235200	255500	266100	277200	288000	298800
Industrial @ 15%	15000	18750	22500	22500	22500	22500	22500	22500	22500	22500
Total	\$ 82010	\$ 137950	\$ 140500	\$ 213500	\$ 257700	\$ 278000	\$ 288600	\$ 299700	\$ 310500	\$ 321300
W. & L. 1st 5 yrs. @ 16%	600000	600000	600000	600000	600000					
2nd @ 18%						675000	675000	675000	675000	675000
W. & L. LINE										
Residential @ 10%	110000	70100	921000	100800	126000	129600	133200	136800	110100	111000
Industrial @ 15%	19000	15000	22500	22500	22500	22500	22500	22500	22500	22500
San City Line @ 18%	396000	396000	396000	396000	396000	396000	396000	396000	396000	396000
Total	\$ 1099000	\$ 1051100	\$ 1110900	\$ 1127300	\$ 1114500	\$ 1223100	\$ 1228700	\$ 1230300	\$ 1233900	\$ 1237500
GRAND TOTAL REVENUE	\$ 2270727	\$ 3054683	\$ 3685972	\$ 4125090	\$ 4547136	\$ 4362110	\$ 5039272	\$ 5212110	\$ 5335349	\$ 5136661

TABLE NO. 5

Exhibit No. 26

COLORADO INTERSTATE GAS COMPANY ESTIMATED OPERATING EXPENSES, REVENUE, ETC., FOR DENVER BUSINESS

	<u>1ST</u>	<u>2ND</u>	<u>3RD</u>	<u>4TH</u>	<u>5TH</u>	<u>6TH</u>	<u>7TH</u>	<u>8TH</u>	<u>9TH</u>	<u>10TH</u>
REVENUE										
Operating Expenses (Entire Project)	\$ 1032087	\$ 1691373	\$ 2196312	\$ 2589890	\$ 2859996	\$ 3082110	\$ 3209872	\$ 3361110	\$ 3462719	\$ 3512161
Management	85000	85000	85000	85000	85000	85000	85000	85000	85000	85000
Operating Labor	53000	80000	90000	130000	135000	112000	170000	175000	175000	175000
Maintenance	75000	70000	60000	60000	60000	60000	60000	65000	65000	85000
Supplies	15000	30000	30000	35000	35000	40000	40000	40000	40000	40000
Fuel	7000	21000	32000	41000	50000	67000	78000	78000	81000	105000
Misc. & Contingencies	35000	30000	30000	30000	30000	30000	30000	30000	30000	30000
Taxes	283000	232000	232000	211000	217000	250000	253000	256000	265000	265000
	\$ 499000	\$ 551000	\$ 559000	\$ 488000	\$ 650000	\$ 671000	\$ 712000	\$ 729000	\$ 741000	\$ 785000
Credit for Gasoline	41619	51815	59767	66258	69505	78103	80218	81119	82116	86015
Net Operating Expense	\$ 457381	\$ 499185	\$ 499233	\$ 421742	\$ 580495	\$ 592897	\$ 631782	\$ 647881	\$ 659514	\$ 698985
% Chargeable to Denver	.5725	.6134	.6798	.6668	.7065	.7127	.7189	.7213	.7230	.7289
Amount Ditto	\$ 262971	\$ 321156	\$ 339979	\$ 391122	\$ 410120	\$ 421125	\$ 451108	\$ 469021	\$ 479627	\$ 509168
Gas at Well Chargeable to										
Denver - H. Cu. Ft.	3000000	5310000	7000000	8890000	9140000	9680000	10200000	10650000	10950000	11325000
Ditto Rate per H.	7¢	7-1/4¢	7-1/4¢	7-3/4¢	8¢	8-1/4¢	8-1/2¢	8-3/4¢	9¢	9-1/4¢
Amount Chargeable to Denver	\$ 210000	\$ 341975	\$ 525000	\$ 630995	\$ 732000	\$ 798600	\$ 867000	\$ 951875	\$ 985500	\$ 1017563
Total Expense Ditto	\$ 459971	\$ 701151	\$ 661379	\$ 1052517	\$ 1112120	\$ 1291525	\$ 1311123	\$ 1120881	\$ 1135127	\$ 1220551
Net Earnings - Ditto	\$ 572716	\$ 989222	\$ 1336133	\$ 1537373	\$ 1717816	\$ 1809115	\$ 1888891	\$ 1965111	\$ 1997622	\$ 1985306
Investment Allocated to Denver										
	\$ 8103135	\$ 9007839	\$ 10362165	\$ 11227212	\$ 11653806	\$ 11755718	\$ 11857689	\$ 11916688	\$ 11959631	\$ 12023314
% For Retirement Reserve										
& Int.	7.07	10.05	12.86	13.85	11.74	15.36	15.95	16.41	16.70	16.51
% Retirement Reserve	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00
% Net Return	3.07	6.05	8.86	9.85	18.74	11.36	11.95	12.41	12.70	12.51

TABLE NO. 6

Exhibit No. 26

COLORADO INTERSTATE GAS COMPANY

ESTIMATED OPERATING EXPENSES, REVENUE, ETC., FOR ENTIRE PROJECT

	<u>1ST</u>	<u>2ND</u>	<u>3RD</u>	<u>4TH</u>	<u>5TH</u>	<u>6TH</u>	<u>7TH</u>	<u>8TH</u>	<u>9TH</u>	<u>10TH</u>
<u>TOTAL REVENUE</u>	\$ 2270727	\$ 3051603	\$ 3689972	\$ 4189090	\$ 4547136	\$ 4836210	\$ 5099272	\$ 5212110	\$ 5335310	\$ 5136661
Net Operating Expenses Exclusive of Gas at Well (See Table No. 5)	451351	495193	499233	561712	580105	599517	631722	617551	661954	698993
Gas at Well	10114000	12800000	11817000	16111000	17170000	18111000	18751000	17106000	19616000	19875000
Value of Gas at Well	710000	988000	1113923	1271233	1397600	1161105	1591090	1678773	1761510	1838138
Total Expenses	1161131	1127193	1612758	1833993	1978693	2089922	2225872	2326326	2186094	2537993
Net Revenue	1109296	1111925	2079214	2351193	2569011	2716318	2813100	2886081	2909253	2899268
Investment Including Branches lines to Colo. Springs, Canon City and Pueblo	15923837	16100142	16100142	16969222	17392092	17392092	17392092	17392092	17392092	17392092
For Retirement Reserve & Int. Retirement Reserve	7.15 4.00	8.96 4.00	12.88 4.00	13.86 4.00	14.81 4.00	15.83 4.00	16.21 4.00	16.63 4.00	16.77 4.00	16.71 4.00
Net Return	3.15	4.96	8.88	9.86	10.81	11.83	12.21	12.63	12.77	12.71

TABLE NO. 7

Exhibit No. 26

GAS PLANT VALUATION - DENVER

	<u>YEARS</u>									
	<u>1ST</u>	<u>2ND</u>	<u>3RD</u>	<u>4TH</u>	<u>5TH</u>	<u>6TH</u>	<u>7TH</u>	<u>8TH</u>	<u>9TH</u>	<u>10TH</u>
End of Year	\$ 10531132	\$ 11526268	\$ 12008952	\$ 12276111	\$ 12563526	\$ 12807147	\$ 12962317	\$ 13111217	\$ 13265117	\$ 13417017
Stations										
P. Mains & Regulators	535236	96681	96682	31212	30021					
P. Mains	75000	100000	150000	200000	150000	100000	100000	100000	100000	100000
Clamps	225000	225000								
Valves	26100	26100	26100	26100	26100	26100	26100	26100	26100	26100
Low Meters	19500	19500	19500	19500	19500	19500	19500	19500	19500	19500
High Meters	4000	5000	5000	4000	4000	4000	4000	4000	4000	4000
Transportation Equipment	5000	5000	2000	1000	1000		1000		1000	
Miscellaneous Equipment	5000	5000	5000	5000	5000	5000	5000	5000	5000	5000
Total End of Year	\$ 11526268	\$ 12008952	\$ 12276111	\$ 12563526	\$ 12807147	\$ 12962317	\$ 13111217	\$ 13265117	\$ 13417017	\$ 13567117

This is the best this can be
photographed because it is
very tightly bound.

TABLE NO. 8

Exhibit No. 20

CONSUMPTION & REVENUE - DENVER

		<u>1ST</u>	<u>2ND</u>	<u>3RD</u>	<u>4TH</u>	<u>5TH</u>	<u>6TH</u>	<u>7TH</u>	<u>8TH</u>	<u>9TH</u>	<u>10TH</u>
1986											
Customers	Actual										
Residential	61,899	61,010	62,130	60,010	59,770	59,230	59,220	59,710	60,300	61,300	62,010
House Htg.	305	2,000	3,000	8,000	10,500	12,500	11,000	15,000	15,000	16,600	17,500
Commercial	5505	5510	5550	5600	5650	5700	5750	5800	5850	5900	5950
Industrial	12	12	25	35	45	50	55	55	60	60	60
Total	70,126	71,562	73,005	71,445	75,965	77,480	79,025	80,595	82,210	83,760	85,520
Annual Sales											
Residential	1811,58	960,600	1,186,170	1,333,680	1,161,250	1,678,110	1,776,600	1,911,680	1,939,900	2,077,000	2,108,310
House Htg.	268,655	453,618	1,207,763	1,903,200	2,455,000	2,803,000	3,003,000	3,210,000	3,160,000	3,401,000	3,753,000
Commercial	101,631.9	501,000	605,000	705,600	813,600	923,100	977,500	1,015,000	1,053,000	1,062,000	1,071,000
Industrial		500,000	150,000	225,000	270,000	280,000	287,000	291,000	300,000	300,000	300,000
Total	3,107,995	2,020,218	2,500,933	2,205,280	2,643,950	3,188,810	3,667,100	3,916,680	3,952,900	4,168,000	4,273,310
Revenue											
Residential		\$ 175,778.9	\$ 191,294.6	\$ 190,761.3	\$ 209,195.0	\$ 220,572.5	\$ 229,181.1	\$ 238,960.0	\$ 246,717.6	\$ 255,177.1	\$ 259,525.0
House Htg.		298,668	763,900	1,212,600	1,571,200	1,807,900	1,915,900	2,099,500	2,212,000	2,335,000	2,432,000
Commercial		377,100	441,000	500,000	567,000	633,100	656,900	679,000	677,100	703,000	709,000
Industrial		120,000	31,000	41,000	61,000	61,000	65,000	67,000	68,000	68,500	68,500
Total Revenue		\$ 251,785.7	\$ 348,224.6	\$ 421,111.3	\$ 441,515.0	\$ 527,025.5	\$ 555,061.1	\$ 587,700.0	\$ 609,157.6	\$ 627,921.1	\$ 642,075.0

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TABLE NO. 9

ESTIMATED EXPENSES & NET REVENUE PUBLIC SERVICE COMPANY OF COLORADO (DENVER ONLY) - YEARS

N. CO. FT. GAS PURCHASED	1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH
All except Industrial	1920218	3000933	3953260	4762850	5381810	5757100	6166680	6502000	6713060	6932310
Industrial	500000	1500000	2250000	2700000	2800000	2870000	2910000	3000000	3005000	3005000
Co. Gas	5000	5000	5000	5000	5000	5000	5000	5000	5000	5000
Lost & Unaccounted For	400000	500000	450000	400000	400000	415000	425000	410000	450000	460000
Total	2825218	5009933	6698260	7907850	8587810	9017100	9526680	9917000	10223060	10463310
Expense										
Gas Purchased	\$ 1032087	\$ 1691373	\$ 2196812	\$ 2650890	\$ 2879936	\$ 3020110	\$ 3209872	\$ 3361110	\$ 3427112	\$ 3512161
Dist. Operation	75500	73000	79000	79000	80000	80000	82000	82000	81000	85000
Customers Operation	360500	312000	343300	360500	360500	390000	413000	425000	430000	435000
General Expense	221000	221000	225000	230000	235000	242000	250000	252000	265000	273000
Taxes	180000	190000	200000	210000	220000	230000	240000	250000	260000	270000
New Business	270000	305000	305000	220000	180000	160000	160000	160000	160000	160000
Dist. Maintenance	275000	275000	100000	100000	90000	90000	90000	95000	95000	95000
Customers Maintenance	165000	165000	165000	75000	77000	76000	77000	77000	73000	75000
Other Maintenance	10000	10000	12000	12000	13000	13000	11000	11000	15000	15000
Administration	114507	61627	72695	81790	92523	97136	102118	106603	109087	112363
Unleased	3000	3000	4000	4000	5000	5000	5000	6000	6000	6500
Total Expense	\$ 2636674	\$ 3315600	\$ 3703907	\$ 3967180	\$ 4230959	\$ 4419576	\$ 4613520	\$ 4835013	\$ 4965636	\$ 5073321
Net before Reserve	88817	171616	507336	877970	1056856	1131036	1193180	1256563	1313612	1317131
Investment at end of Year	11986268	12008852	12276111	12563526	12807117	12962317	13111217	13265117	134117017	13567917
Reserve at 1.8% of Depreciable Property	119928	157930	162385	167160	171223	173818	176359	178882	181123	183937
Net after Reserve in Investment	238745	13716	344951	710010	884633	957220	1017121	1077681	1132225	1163497
		0.11	2.01	5.66	6.91	7.38	7.76	8.12	8.44	8.58

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City	Field Supply	Length of Pipe Line Miles	Size of Supply Pipe	Price Delivered at City Gate	Rates - Per Meter Monthly	Min-Minimum Charge Per-Service Charge
<u>Cincinnati</u> 930 B. T. V.	West Virginia	153	20" HP	45¢ M	First 5000 cu. ft. Next 5000 " " " 5000 " " " 5000 " " All over 25000 cu. ft.	75¢ per M 75¢ 70¢ " " Min 65¢ " " 60¢ " " 55¢ " " 50¢ " "
<u>Los Angeles</u> 1100 to 1125 B.T.U.	Southern California	15 to 110	12" HP to 16" HP	15 1/2¢ M- 40 M- 20¢ M- 20 M- 25¢ all over	First 4000 cu. ft. Next 11000 " " " 25000 " " Over 40000 " "	92¢ per M 80¢ 85¢ " " Min 78¢ " " 72¢ " "
<u>Dallas</u> 950 to 1000 B.T.U.	Oklahoma & West Texas	150 to 200		40¢ M	First 700 cu. ft. Next 49500 " " " 50000 " " " 100000 " " " 100000 " " All over 300000 cu. ft.	15.00¢ per M 50¢ 6.75¢ " " Min 6.51¢ " " 6.00¢ " " 5.51¢ " " 5.00¢ " "
<u>Kansas City, Mo.</u>					First 400 cu. ft. Next 1600 " " " 48000 " " Over 50000 " "	5¢ total 75¢ 5¢ per 100 Min 8¢ " " 8¢ " "
<u>Cleveland</u>					First 5000 cu. ft. Next 10000 " " " 10000 " " " 25000 " " All over 50000 cu. ft.	50¢ per M 50¢ 55¢ " " 8¢ 60¢ " " 75¢ " " \$1.00 " "
<u>Pittsburgh</u>					First 50000 cu. ft. Next 50000 " " " 100000 " " All over 200000 cu. ft.	60¢ per M \$1.00 55¢ per M Min 50¢ " " 45¢ " "
<u>Laton Rouge</u>	Calabria	170		35¢	First 500 cu. ft. Next 79500 " " " 60000 " " All over 140000 cu. ft.	\$1.10 " \$1.10 70¢ per M Min 60¢ " " 25¢ " "
<u>Denver</u>	Amarillo	343	22" and 20"	40¢ M	First 200 cu. ft. Next 2800 " " " 7000 " " All over 10000 cu. ft.	\$1.50 " \$1.50 70¢ per 100 60¢ per 100 Min 50¢ per 100

Mr. Brock: I next offer in evidence a certified copy of the report on proposed natural gas rates for Denver dated August 10, 1927 and made by A. C. King, Consulting Engineer, 35 South Dearborn Street, Chicago, and filed with the Regional Ordinance No. 178, Series 1927, in the office of the City Clerk of Denver, Colorado.

I might say in that connection that the ordinance of September 14th refers to the King report expressly as the basis for the determination by the City Council that it was feasible to bring natural gas to Denver.

Mr. Examiner, I have enough copies left to supply you with a complete set if you desire it.

The Trial Examiner: Fine. Have you distributed copies of Exhibit 26 to Counsel?

Mr. Brock: Yes.

The Trial Examiner: Is there any objection to the offer of Exhibit 26?

Mr. March: Yes, sir, there is an objection, Mr. Examiner. We don't object to the other exhibits, but we do object most emphatically to the introduction of Exhibit 26. This exhibit differs from the other exhibits. It is not a public document. It is a report by an engineer, a consulting engineer and in this report are various data which we want to cross examine the witness who prepared the report about.

For example, there are statements in here that, as I understand it, in regard to a 40-cent rate here in Denver, the necessity for it. There are statements here as to the Panhandle field. There are estimates—various statements about this entire project, statements about the coal situation here. I'm just glancing through this report here and I find certain statements about—yes, I find a statement like this in the report:

"Coal operators have expressed much fear that the proposed pipeline project will take away the greater part of their business in the state and especially in Denver. That their opposition is ill-advised is shown by the propaganda which they issued showing how much cheaper coal is than gas for the ordinary householder and therefore is much to be preferred."

Now there is in this report a great many statements like that and we feel that we should have the right to cross examine the witness who presented this report. We will have no objection probably to the admission of this report if Mr. King is called in and it is put in in the proper way. We say it is entirely improper to bring in this report and attempt to put it in as a document without a witness to cross examine. It denies us a very fundamental right of cross examination here, and I think this has some direct bearing upon the outcome of the proceedings here, and so we object to it on that ground, if it please the Examiner.

The Trial Examiner: Where is Mr. King, Mr. Brock?

Mr. Brock: He was then in Chicago, is the address given in the report. As far as I know he is still there. I don't know anything different.

The Trial Examiner: Is he still living?

Mr. Brock: Well, I think so.

The Trial Examiner: Well, the Examiner—

Mr. Brock: May I make an observation?

The Trial Examiner: Surely, Mr. Brock.

Mr. Brock: So that you will understand just what this situation is.

By this original ordinance granting the franchise to the Public Service Company and voted upon by the qualified tax paying electors it was provided that if the Mayor and City Council should determine that it was feasible to bring natural gas to Denver then the Public Service Company under severe penalty should be required to make the necessary arrangements to bring that natural gas to Denver. Following that ordinance the Mayor and City Council employed this engineer to make an investigation and report back to the Mayor and City Council with respect to that matter. After that report came in the City Council by ordinance No. 178, Exhibit No. 25, passed this ordinance determining that it was feasible to bring natural gas to Denver and ordering the clerk to so notify the Public Service Company so that they would understand what their obligation would be under the original ordinance and the very

first section of this ordinance, No. 178, provides, and I think I should read it:

"After investigation and upon competent engineering advice taking into consideration all of the economic factors involved, it has been and hereby is now found and determined that it is feasible to bring natural gas to Denver; that said Public Service Company of Colorado be and it is hereby given notice of said findings and determination, together with the engineering information upon which such determination was based, and that the Clerk of the Council be and he hereby is directed forthwith upon the final passage, publication and approval of this ordinance by the Mayor to deliver to said Public Service Company of Colorado a duly certified copy hereof together with a verified copy of the 'Report on proposed natural gas rates for Denver,' dated August 10, 1927, which was prepared after investigation by A. C. King, consulting engineer of Chicago, Illinois, and which said report constitutes the engineering advice and information upon which said findings and determination are based and the original copy of which is now on file in the office of the Clerk of the Council of the City and County of Denver, to which reference is had more particularly, and notice of which is hereby given to said Public Service Company of Colorado in conformity with the provisions of said section, IV-c of said above-mentioned franchise."

Accordingly this is a public document of the City and County of Denver in its files and moreover the City and County of Denver is a complainant in this case. In fact it was the City and County of Denver that initiated this whole proceeding. It is a part of their files and their records. It has been made a part of this ordinance of the City and County of Denver upon that proposition, and I certainly think it is admissible in evidence.

Mr. March: If it please the Examiner, we have no objection to the ordinance going in. That is a public document, but here we find a report a report made by an employe of the City, a report which was not offered in evidence in any proceedings, an open hearing, a report made by a witness who was never cross examined by anybody in open hearing. Not only that but, this report contains the most controversial matters. You have an estimate of re-

serves in the field in this report. -We don't know and the Examiner doesn't know and the Federal Power Commission won't know if this report is worth the paper it is written on until we have the witness right here who wrote the report and have an opportunity to cross examine him about the report.

You will recall yesterday that I brought out through Mr. Spencer here that the company furnished Mr. King—co-operated with Mr. King very closely in making this report.

Mr. Brock: To the extent of giving him information.

Mr. March: I want Mr. King to say just exactly what happened. I'm not imputing any lack of good faith here in the report or imputing that the gas company wrote the report or anything like that. We just want to know the facts surrounding the report, what it is based upon. We don't even know what the report is based upon, except by this man's opinion. We don't know that this man is a competent engineer here. We have a right to test his expert qualifications here on the witness-stand.

The Trial Examiner: I think the Examiner is in position to rule, Mr. March.

As I view this offer, the Commission's counsel raises no objection to the foundation for the exhibit Mr. Brock. Therefore, the mere fact that it is a public document wouldn't necessarily make it admissible in this proceeding. The harmful part of the exhibit, as the Examiner sees it, it is an engineering report containing many statements by the witness, by Mr. King, rather, and representing his informed opinion. Now to deprive Commission's counsel and the complainants of the right to cross examine Mr. King would seem to me to be a very harmful thing.

In view of that I will sustain the objection of Commission's counsel to the offer of Exhibit 26.

(Exhibit 26, marked for identification.)

Mr. Brock: As I understand it, Mr. Examiner, this exhibit will nevertheless become a part of the record for the purposes of any possible review proceeding.

The Trial Examiner: It will not become a part of the record, Mr. Brock. A copy of the exhibit is retained in

the official files of the Commission but it does not become a part of the record. However, if you desire you may make an offer of proof.

Mr. Brock: Well, I desire to make an offer of proof in strict accordance with the report itself, and if need be read it into the record.

Mr. March: Why, if it please the Examiner, reading it into the record won't help the matter any. That's just putting the thing in evidence. This man who reads it into the record, he didn't write the report, and that adds nothing to it. It might just as well be put in evidence. Why doesn't he call Mr. King? We would be glad to let the thing go in then without any objection probably.

Mr. Brock: Certainly the practice in court is if the exhibit is offered and rejected it goes up with the record so that the reviewing court can itself determine whether the trial court was right in rejecting the exhibit and that is the point that we want to preserve. We don't want to have to send this case back to the Commission again if the reviewing court should ultimately conclude that we are right.

Mr. March: Well, if it please the Examiner, I think it can be understood it is marked for identification in the record and not in evidence, and will not be considered by the Commission.

The Trial Examiner: It will remain in the exhibit file, Mr. Brock, but as far as the proceeding is concerned the Commission and the Examiner will not consider it as evidence.

Mr. Brock: I understand that for your purposes you have sustained the objection.

The Trial Examiner: Yes.

Mr. Campbell: Mr. Examiner, to avoid any possible argument on this point at a later date I should like to ask Commission's counsel if they object to this offer of Exhibit No. 26 on the ground that the clerk himself is not here to identify it. It is a certified copy. Now, if there is going to be any objection on that score we can go get the clerk and he can repeat—

Mr. March: I thought we had made ourselves perfectly clear here. The clerk isn't going to add anything to it as far as Mr. King's report is concerned. If you want Mr. King's report in evidence, as far as Commission's counsel is concerned, you can bring Mr. King in here.

Mr. Campbell: You are shooting a little fast here. Let me finish.

The Trial Examiner: Your objection, Mr. March, didn't go to the foundation of the exhibit?

Mr. March: My objection goes to the exhibit in its entirety, on the grounds that the witness who prepared the exhibit is not brought in here to be cross examined by us. Now as far as we are concerned it is marked for identification in the record. It's not in evidence and there is nothing in this thing—we don't question the certification of any clerk here at all.

Mr. Campbell: That's all I want you to say. Do you say that now?

Mr. March: Why, certainly.

Mr. Campbell: Very well. Let the record show that and let the record also show that it has been tendered as an exhibit and that counsel makes an offer of it as proof and that counsel are willing to sit down and read every word of it in the record as an offer of proof but that the Examiner has dispensed with that and that we offer it not further than a public document upon which the City acted and on which the Colorado Interstate acted.

The Trial Examiner: The offer is rejected on the grounds stated.

(Vol. II, pp. 165-174.)

2. The agreement between Southwestern Development Company, Cities Service Company and Standard Oil Company (N. J.) to undertake the project of constructing the pipe line from the Texas Panhandle field to Denver.

On April 5, 1927, Southwestern Development Company, Cities Service Company and Standard Oil Company (N. J.) entered into the following contract, received as Exhibit 1:

[EXHIBIT 1]

Memorandum of Stipulations agreed upon between Southwestern Development Company, Cities Service Company and Standard Oil Company (New Jersey).

New York, N. Y., April 5th, 1927.

I. The project in general contemplates the acquisition of natural gas properties in the Amarillo Gas Field, the construction of a pipe line from that field to the city of Denver via Pueblo and Colorado Springs with branches to Canon City and other places, the sale and delivery of natural gas at the city gate for distribution in said cities and in other places and the sale of natural gas for industrial purposes to industries along the route of the pipe line.

II. The plan of the project as herein set forth is to be carried out only upon the condition that the attorneys for the parties advise favorably upon the legality under Federal Laws and the laws of the several States where the business is located, and the plan may be modified by some alternative plan which meets with the approval of the attorneys and substantially conforms to the plan herein stated. One corporation instead of two may be created or used hereunder in the State of Texas to fulfill the functions herein after assigned to two corporations.

III. The Southwestern Development Company is the owner of all of the capital stock of the Amarillo Oil Company which is the owner of a large area of gas leaseholds, gas wells and other gas properties located in the counties of Hartley, Oldham, Moore, Potter, Hutchinson and Carson, State of Texas. The Southwestern Development Company agrees to form and hold the stock of a corporation which will be and continue separate from its other projects now

operating or which may hereafter operate in said counties and will cause the Amarillo Oil Company to convey to said new company, hereinafter designated as the Texas Producing Company (free from all debts, liens and encumbrances) all its gas leaseholds, gas fee and gas wells and equipment, including pipe lines.

The Southwestern Development Company also agrees to cause said Texas Producing Company to enter into a contract to operate its wells and gas properties so as to produce therefrom the amount of natural gas required by the project except to the extent that natural gas required by the project may be purchased from others. It will also cause the Texas Producing Company to sell its gas production at cost and so far as is practicable to hold its areas of gas lands as a blocked-up reserve during the time the gas of other producers can be profitably purchased.

It is agreed, however, that it is necessary that the Texas Producing Company sell to the project at all times sufficient gas produced from its own wells, which together with the gas sold to the Panhandle Pipe Line Company and Amarillo Oil Company under the contracts herein provided for, will enable the Texas Producing Company to comply with the terms of its leases and to offset gas taken by others in competitive areas, and the Southwestern Development Company agrees to cause the Amarillo Oil Company and Panhandle Pipe Line Company each to purchase and take from the Texas Producing Company at all times as nearly as may be practicable the same proportion of their total requirements of gas as the amount taken by the project from the wells of the Texas Producing Company bears to the total amount of the gas requirements of the project.

It is agreed that Southwestern Development Company shall cause the Texas Producing Company and the Panhandle Pipe Line Company and Amarillo Oil Company to enter into a contract whereby the Texas Producing Company shall sell and the Panhandle Pipe Line Company and/or the Amarillo Gas Company shall purchase the natural gas required to supply the customers of the Panhandle Pipe Line Company and the Amarillo Gas Company in the city of Amarillo and its environs, and to supply the Amarillo Oil Company with gas for sale to the Smelter Company which is now being supplied by it, and any consumers which

it may hereafter acquire located in the city of Amarillo or its environs and the gas supplied under this contract is to have preference over the gas supplied to the project.

It is agreed also that the price to be paid for each one thousand (1,000) cubic feet of said gas deliverable to said Panhandle Pipe Line Company and/or the Amarillo Oil Company shall be the actual cost per M cubic feet to said Texas Producing Company including in said costs maintenance and operating expenses, rentals and royalties, maintenance of funds or reserves for renewals, replacements or extraordinary maintenance not covered by expenditures for current operation or ordinary maintenance, taxes excepting net income or net profits taxes, general expense, bond interest and sinking fund requirements, development costs, a fair allowance for contingencies, and the expense of purchasing and procuring gas if any is purchased by said Texas Producing Company from other producers of gas; such costs are to be computed on all gas sold by said Texas Producing Company and an average price per M cubic feet so ascertained, the method for fixing the same to be carefully worked out and set forth in the agreement hereafter to be made pursuant to these stipulations except that from the time that the method herein defined for computing the cost of gas to the Panhandle Pipe Line Company and Amarillo Oil Company goes into effect until the time when the project begins taking gas from the Texas Producing Company there shall be included as a part of the cost of gas, the interest accruing on one-fourth of any bonds issued by the Texas Producing Company, but the cost of any wells drilled by the Texas Producing Company which are not necessary to supply gas for the requirements of the Panhandle Pipe Line Company and Amarillo Oil Company, shall not be taken into account in determining the cost of gas to them, nor shall sinking fund payments on bonds of Texas Producing Company commence during such period.

IV. The Southwestern Development Company also agrees to cause to be incorporated and to hold the stock of a company hereinafter designated as the Texas Connecting Company which shall build a pipe line of adequate capacity and equipment, including compressors and branch lines, for the gathering and transporting of natural gas from the Amarillo

Gas Field in said counties to a junction point in Oklahoma or New Mexico near the northwest corner of the Texas Panhandle where its pipe line will connect with and make deliveries of natural gas to the project.

The Southwestern Development Company agrees to cause said Texas Connecting Company to enter into a contract with the Texas Producing Company to purchase the gas production of the latter company and to purchase gas from other producers when the same may be profitably acquired and to sell and deliver the same to the project at the cost thereof. Said Texas Connecting Company shall also build and operate a plant for the extraction of gasoline from the natural gas transported, and treat therein and have the recovered product therefrom, the net profits therefrom to be credited upon the cost chargeable against the Colorado Company for the natural gas sold and delivered to it.

V. The Texas Producing Company and the Texas Connecting Company shall not make any contract for the sale of natural gas nor do anything that may impair the capacity of each to fulfill its deliveries of natural gas hereunder for the full term of the agreement to be made in accordance with these stipulations. (Contract with the Amarillo Oil Company and/or Panhandle Pipe Line Company to be expressly accepted as a preferred obligation as hereinbefore provided.) In case profitable sale of natural gas may be made with the consent of the Colorado Company to others than the project, the net profits shall be paid to or credited upon the cost of gas chargeable to the Colorado Company hereunder as if such sales had been made for the Colorado Company's account, and subject to this provision, the Texas Producing Company is to co-operate with the Amarillo Oil Company and/or Panhandle Pipe Line Company in the sale of gas to them for delivery to additional customers in northwestern Texas, known as the Panhandle of Texas, and in making gas from the Amarillo Gas Field in said counties available on reasonable terms to such customers.

VI. For the purpose of defining the respective operating rights of the Amarillo Oil Company, which retains the ownership of the fee oil and the leasehold oil, and on the other hand the Texas Producing Company which becomes the owner of the fee gas and leasehold gas in the same lands, a working agreement shall be entered into under

the usual terms customary in oil and gas fields whereby gas wells drilled by the oil owners may be purchased at cost by the owner of the leasehold gas and oil wells drilled by the owner of the leasehold gas may be purchased at cost by the owner of the leasehold oil, and rental obligations may be shared. Said working agreement to grant an option to the project at cost upon any gas which may be developed in the counties of Hartley, Oldham, Moore, Potter, Hutchinson and Carson, State of Texas by the Amarillo Oil Company.

VII. Standard Oil Company (New Jersey) agrees to form a corporation, hereinafter designated "The Colorado Company", and to cause the stock of the Colorado Company to be issued to the companies in the amounts hereinafter set forth. Said Colorado Company shall construct a pipe line of adequate capacity and equipment, including branch lines, and main line to extend from a connection with the pipe line of the Texas Connecting Company and follow a route via or near Pueblo and Colorado Springs to Denver, with a branch line to Canon City and a branch line to each of such other places as may be made a part of the project. Said Colorado Company shall enter into a contract with the Texas Connecting Company to purchase gas at cost from the Texas Connecting Company for the natural gas requirements of its customers and to enter into a contract with the Public Service Company of Colorado for the delivery of gas to Denver and its environs, a contract with the Pueblo Gas & Fuel Company for Pueblo and its environs, and a contract with Cities Service Company or its nominee for delivery of gas for distribution in Colorado Springs, Ivywild and their environs if Cities Service Company succeeds in buying the distribution plants in the last two named places; if such purchase is not made, then the Colorado Company shall negotiate and endeavor to make a contract with the owners of said plants in Colorado Springs and Ivywild and environs.

VIII. In view of the possibility of gas being found along the pipe line of the Colorado Company or within piping distance of the market then being supplied by it, the parties agree that it may be desirable for the protection of the money then invested in the project and/or the plants of the distributing companies to arrange for purchase of such

gas by the Colorado Company and the marketing of such gas while the gas of the Texas Producing Company is reserved for the future. It is understood that the distribution companies controlled by Cities Service Company are to use their best efforts to co-operate with the Colorado Company in the disposal of such gas. Upon failure of the Colorado Company to purchase or dispose of any such gas or to participate in the purchase or disposal thereof, then the distributing companies controlled by Cities Service Company shall have the right to purchase and market that part of such gas which if such purchase were not made would be offered for sale to customers of distributing companies. Otherwise, the distribution companies controlled by Cities Service Company are to purchase all of their natural gas requirements from the Colorado Company, and the Colorado Company to purchase all of its requirements from the Texas Connecting Company, and the Texas Connecting Company from the Texas Producing Company and other producers of gas in the Amarillo Field, deliverable as heretofore set forth.

IX. The contract between the Texas Producing Company and the Texas Connecting Company and the contract between the Texas Connecting Company and the Colorado Company and the contract between the Colorado Company and the distributing companies in Denver and Pueblo owned or controlled by Cities Service Company; and the contract between the Colorado Company and Cities Service Company for delivery of gas for use in Colorado Springs and Ivywild if Cities Service Company should acquire the plants now being operated in said two last named cities by the municipalities, shall all be for a term of twenty years from and after the execution of the first one thereof and so long thereafter as natural gas may be profitably sold by the Colorado Company after payment of the cost thereof to the Texas Connecting Company as herein provided.

X. It is agreed between the parties hereto that on the signing of the agreement contemplated under these stipulations, an engineering firm such as Ford, Bacon & Davis, Inc., or similarly equipped engineers, shall be engaged by the Texas Producing Company, the Texas Connecting Company and the Colorado Company (Christy Payne being hereby authorized to act for them in this particular until in

incorporated if any such action is expedient) to construct the pipe lines and stations and to operate all properties under engineering and/or construction contracts, during a period of twenty years, terminable, however, by the engineers or by the employing companies at the end of five years provided one year's notice has been given or at any time thereafter on one year's notice; the Colorado Company to name other engineers in place of those retired for the remaining term under contracts terminable on one year's notice. Remuneration for said engineering operation and management to be prorated in the proportion that the investment of each company bears to the total investment.

XI. The Colorado Company reserves to itself for direct service the sales of gas to the steel plant of the Colorado Fuel & Iron Company in or near Pueblo and to the cement and zinc smelter refineries, ore reduction plants and other industries in and along the railroad to Canon City, and to any other large industries located along the route of its main and branch lines and not located in or abutting on the low or intermediate pressure distribution plants maintained in Denver, Pueblo, Colorado Springs, and the other places which may be supplied under contract for delivery of gas by the Colorado Company at the city gate.

XII. Cities Service Company agrees to cause the Public Service Company of Colorado to convert its artificial gas distribution plant in the city of Denver and environs into a natural gas distribution plant and to cause the Pueblo Gas & Fuel Company to convert its artificial gas plant now operated by it in the City of Pueblo into a natural gas distribution plant. It is understood also that Cities Service Company is negotiating for the purchase of the plant or the capital stock of the Colorado Springs Light, Heat & Power Company now operated by the City of Colorado Springs, an artificial gas company supplying Colorado Springs and Ivywild and environs, and that if said purchase is consummated it will cause the company making such purchase to convert said artificial gas plant into a natural gas distribution plant. Said Cities Service Company also agrees to cause the Public Service Company of Colorado, the Pueblo Gas & Fuel Company and the company distributing gas in Colorado Springs and Ivywild, if such plants are secured by it, to enter into contracts

with the Colorado Company to purchase and take from the Colorado Company all of the natural gas required by said distribution plants for the supply of their consumers, which contracts shall contain the usual provisions for the purchase and taking of natural gas and its distribution and in addition substantially the following provisions:

(a) During the first fifteen years after the Colorado Company is ready to make deliveries, the city gate price which the distribution company shall pay the Colorado Company for gas purchased and taken shall be forty (40) cents per thousand cubic feet. Gas may also be purchased from the Colorado Company for sale under special industrial contracts, which special contracts have been submitted to and approved by the Colorado Company, at eighty five per cent. (85%) of the price charged by the distribution company to such industrial consumers under such approved contracts.

It is provided, however, that six months before the beginning of the eleventh year of the above agreed first fifteen year period, if the Colorado Company finds that its cost of obtaining natural gas has increased on the average per thousand cubic feet during the first six months of said tenth year over the cost of obtaining gas during the sixth, seventh and eighth years, then it shall bring such increased cost to the attention of said distribution companies, and an adjustment of said rates shall be made if the parties are then able to agree mutually upon the amount of such increase; if not able to fix such increase by mutual agreement, then said prices shall remain unchanged for said entire period of fifteen years. After the said period of the first fifteen years, the prices in effect at the end of said first fifteen year period are to continue as basic prices, but if the Colorado Company by reason of an increase in the cost of producing and obtaining natural gas is obliged to pay an increased price for its supply of gas for the purposes of the agreement or agreements made under this stipulation over and above the average price paid during the eleventh to fifteenth years inclusive, then it may on six months' written notice, increase said prices to the same extent. In the event such increased prices are not acceptable to said distribution companies, the increase under the facts above set forth shall be arbitrated.

9.55

(b) The distribution companies shall adopt and endeavor to secure in the cities served a schedule of rates which will tend to stimulate sales of natural gas for house heating as well as for cooking, laundry work and hot water heating, all parties to co-operate in the effort to secure satisfactory rate schedules in each city served.

(c) Each distribution company shall make every reasonable effort to increase and build up sales of natural gas in such towns and engage and pay for the service of the Natural Gas Department of H. L. Doherty & Company to direct such efforts, doing among other things, to the extent such Department deems advisable, the following:

1. Attaching any and all new consumers abutting on existing lines and extending present distribution systems throughout any sections where profitable consumers may be secured.

2. Introduction of and demonstrations of the workings and benefits of proper burners and appliances designed for the use of natural gas. Demonstration and sale of natural gas heating and other natural gas appliances at convenient point or points where public interest may be attracted and secured, and sale of such appliances at fair prices and on reasonable terms of payment, and on installment terms of payment when consumer desires, if found necessary to stimulate sales of gas.

3. Advertising the advantages of natural gas in local papers, distribution of pamphlets to interest and educate the public in the use of natural gas, and the holding of frequent educational campaigns and natural gas demonstrations together with personal solicitations

4. Making a thorough survey of the commercial and industrial sales possibilities; instituting schedules of rates to attract the major portion of this business; making extensions of low pressure or city high pressure lines as may be necessary to meet the requirements of these classes of consumers.

5. To make available for the purpose of increasing sales of natural gas the following minimum expenditures for the use of the sales department:

1st year, an amount equal to \$2.00 per consumer then attached to lines.

2nd year, an amount equal to \$1.50 per consumer then attached to lines.

3rd year, an amount equal to \$1.00 per consumer then attached to lines.

4th year, an amount equal to \$.75 per consumer then attached to lines.

5th year, an amount equal to \$.50 per consumer then attached to lines.

(d) Cities Service Company agrees to cause the Public Service Company of Colorado and the Pueblo Gas & Fuel Company, and such company as it may organize to operate the distribution plant in the city of Colorado Springs and Ivywild, if purchased by Cities Service Company, to make such additions and changes in the distribution plant in each city operated respectively by them as will insure so far as the capacity of the distribution plant will do so an adequate and uniform pressure of natural gas throughout each city and its environs in keeping with good practice in cities where natural gas is supplied for house heating as well as other domestic purposes. Such additions and changes shall be completed and in operation at the time the Colorado Company is ready to commence deliveries of natural gas hereunder, and shall be so constructed that a pressure of thirty pounds gauge to the square inch at each of the Colorado Company's delivery points will give uniform and adequate pressure throughout each distribution plant.

(e) In any of said contracts it is to be stipulated that the demands of domestic consumers upon the supply of natural gas are to be preferred over service to industrial consumers and that the remainder may be prorated, after demands of domestic consumers, among commercial and industrial consumers, but that such domestic preference shall not be exercised so as to deprive the Colorado Fuel & Iron Company of the volume of gas needed to complete open hearth heats then in jeopardy and to keep its furnaces warm during extreme domestic demand upon the pipe line of the Colorado Company, or so as to deprive any

other industrial consumer which requires a small proportion of its normal gas demand to prevent damage to its appliances.

(f) The gas deliverable at the city gate of each distribution plant shall be measured by orifice meter or other meter of standard type and equally accurate. The unit of measurement shall be one thousand cubic feet of natural gas at an assumed temperature of 60 degrees F. and an assumed pressure of eight ounces above 12.7 pounds atmospheric pressure computed according to Boyle's Law relating to gas measured at varying pressures, but without allowance for variations of barometer, the specific gravity of the gas to be ascertained each three months and the average temperature determined and used in the computations. The delivering company to furnish, maintain and read the meters and the receiving company to have the right to install check meter or meters of standard and accurate grade with duplicate installation and daily or frequent checking comparisons of readings.

In order to keep account of the gas sold to domestic consumers and paid for at one rate, and gas sold for industrial purposes and paid for at another rate, the amount of natural gas used by the distributing company in any of its power plant or plants and the amount consumed by the distribution company's industrial special rate consumers, shall be deducted from the total amount registered by the Colorado Company's meter at such delivery point and the difference between these two amounts shall be considered the amount of gas delivered by the Colorado Company to the distribution company for the purpose of supplying the distribution company's domestic consumers.

(g) Cities Service Company agrees to use its best endeavors to promptly obtain suitable franchise and rate ordinances for the sale of natural gas in Denver and Pueblo, and in any other city, including Colorado Springs and Ivywild, in which it may install or acquire the distribution plant, and so far as is practicable to secure rate ordinances to cover not less than a fifteen year term.

It is agreed that the parties hereto are to give the Cities Service Company opportunity to purchase the artificial gas plants in the City of Colorado Springs and Ivywild and

secure a franchise for natural gas and a rate ordinance therein, but if the Cities Service Company is unsuccessful in its attempt to purchase said plants, its right to have first opportunity shall expire three months after the Colorado Company's line is in operation. It is also agreed that if there are other cities and towns which the Colorado Company believes to be available markets, it shall from time to time give the Cities Service Company thirty days' notice and opportunity to investigate each of such towns and cities; if the Cities Service Company upon such investigation desires to install a natural gas distribution plant therein it shall within said thirty days give notice of such conclusion and shall have first opportunity for a period of three months thereafter in which to secure a franchise and rate ordinance.

XIII. It is agreed that out of the money raised for the project, the Colorado Company is to pay to the Southwestern Development Company through the purchase of bonds of the Texas Producing Company and the Texas Connecting Company as set forth in these stipulations and the financial statement attached hereto, Five Million Dollars (\$5,000,000) in cash and is to deliver to the Texas Connecting Company fifty (50) per cent. of its common stock (after deducting from the total common stock any shares allotted under stock warrants with bonds and the shares to the extent of fifteen (15) per cent. of the total original issue allotted to Cities Service Company), and One Million Dollars (\$1,000,000) par value of its preferred stock, in consideration of the obligations assumed by it hereunder to produce and deliver gas, supported by the wells, gas leaseholds and fee gas to be acquired by the Texas Producing Company and the pipe lines and facilities to be constructed by the Texas Connecting Company, free from any liens, debts or encumbrances.

XIV. In the obligations hereinbefore set forth upon the Texas Producing Company to sell gas to the Texas Connecting Company and the Texas Connecting Company to buy from the Texas Producing Company, and the Texas Connecting Company to sell to the Colorado Company and the Colorado Company to buy from the Texas Connecting Company, at cost, it is agreed that such cost shall include all money expended in producing, purchasing and transporting gas to the place of measurement and delivery, with payments made monthly upon monthly cost estimates with

semi-annual adjustments to meet six months' actual costs, including in such costs maintaining and operating expenses, rentals and royalties, maintenance of funds or reserves for renewals, replacements or extraordinary maintenance not covered by expenditures for current operations or ordinary maintenance, taxes excepting net income or net profits taxes, general expense, bond interest and sinking fund requirements, development costs, a fair allowance for contingencies and the expense of purchasing and procuring gas if any is purchased from other producers of gas, but there shall not be included in the cost of gas sold to the Texas Connecting Company and/or the Colorado Company any rentals on leases from which the Colorado Company has relinquished its right to have the gas production delivered for the project and has given notice of such relinquishment. In the event the Texas Producing Company and the Texas Connecting Company have profits from any source and accumulate a surplus in excess of working capital requirements there shall be a reduction in the price of gas until such excess is used up.

XV. Southwestern Development Company agrees that it will not permit the Amarillo Oil Company to incur any obligations on its natural gas properties described herein, other than in the natural course of the current and normal operations under existing contracts, or to dispose of any part of its properties during the period of the negotiation for franchise and rate ordinance for natural gas in the City of Denver and if an acceptable franchise and rate ordinance is secured, then continuing until the gas wells and gas fee and gas leaseholders are vested in the Texas Producing Company as herein provided.

XVI. All parties hereto agree upon the execution of these stipulations to proceed diligently to the preparation and execution of formal agreements substantially on the terms of these stipulations. Upon the execution of said agreements it is agreed that Cities Service Company will cause the Public Service Company of Colorado to use its best efforts to secure a franchise and rate ordinance for the distribution of natural gas in the city of Denver and in the city of Pueblo. On securing such natural gas franchise and rate ordinances on terms which make the project profitably feasible in the judgment of the parties hereto,

the obligations of the parties hereunder shall immediately become effective and the financing and construction program proceeded with diligently.

It is agreed that a schedule and form of rates in the city of Denver substantially as follows contained in a reasonably workable ordinance duly enacted, shall be deemed to make the project profitably feasible and the agreement immediately effective:

\$2.00 for the first 1,000 cubic feet or less

.60 per thousand cubic feet for the next 9,000 cubic feet

.50 per thousand cubic feet for all over 10,000 cubic feet

In case an acceptable rate ordinance is not secured in the city of Denver on or before the 1st day of July, 1927, the parties hereto or any of them may terminate participation herein and cancel any agreements made hereunder, each party thereupon to be free and without prejudice to act as if these stipulations and any agreements thereunder had never been made.

XVII. The Colorado Company shall have free access during the term of these stipulations and any agreements made hereunder, to all property and to the financial and corporate data and records, reports, books of account, operating and financial data, audits completed or in progress, and all facts and data including well logs, records and maps having any relevancy to the project, of the following companies, viz., the Texas Connecting Company, the Texas Producing Company, Amarillo Oil Company, Panhandle Pipe Line Company, Southwestern Development Company, and any and all subsidiaries, associate or distribution companies, distributing natural gas deliverable under these stipulations or any and all agreements which may be made pursuant to any contracts which may be entered into pursuant hereto.

XVIII. To provide the final funds for the project, it is agreed that the Colorado Company will issue its Twenty Year, Six Per Cent. Sinking Fund Gold Bonds, in such amounts and under such sinking fund conditions as it may find expedient, and with detachable stock warrants at a rate not to exceed ten shares for each One Thousand Dollar (\$1,000) bond of the original issue, and at a price not less

than Fifteen Dollars (\$15.00) per share, if deemed necessary to make the bonds marketable, warrants to expire if not taken up on or before the 1st day of July 1930; said bonds shall be secured by issuing to a Trust Company, Trustee, to be selected by the Colorado Company, a first mortgage and/or deed of trust conveying to such Trustee its pipe lines and other facilities and in addition such bonds shall be secured by pledge of the bonds of the Texas Connecting Company and the Texas Producing Company purchased and owned by the Colorado Company as hereinafter provided, by pledge of the gas purchase contract with the Texas Connecting Company by pledge of the assignment of the gas purchase contract between the Texas Connecting Company and the Texas Producing Company and by pledge of the contracts of the Colorado Company with distributors in the cities served.

The Texas Connecting Company and the Texas Producing Company will also each issue its Twenty Year Six Per Cent. Sinking Fund Gold Bonds in such amount and under such sinking fund condition as may be determined; for the cost of construction and cost of acquisition of properties, the bonds of the Texas Producing Company to include Five Million Dollars (\$5,000,000) for purchase of fee gas, leasehold gas and gas wells of the Amarillo Oil Company, which bonds will be bought at par by the Colorado Company and will be secured by issuing to a Trust Company, Trustee, a first mortgage and/or deed of trust conveying said properties. The Texas Producing Company will also assign as security its contract with the Texas Connecting Company and the Texas Connecting Company will also assign as security to the Colorado Company its contracts with the Texas Producing Company and others for gas and such assignments and contracts may be pledged also under the Colorado Company mortgage.

In addition to said bonds, the Colorado Company is to issue—

(a) To Standard Oil Company (New Jersey) at par, One Million Dollars of Six Per Cent. Preferred stock, preferred as to assets and dividends, redeemable at any time after five (5) years from date at One Hundred Five (105) and accumulated unpaid dividends.

To the Texas Connecting Company (whose stock is to be owned by the Southwestern Development Company) One Million Dollars (\$1,000,000) of said Preferred Stock, as part consideration for the gas delivery contract.

(b) To Standard Oil Company (New Jersey), for One Million Dollars (\$1,000,000) cash, fifty (50) per cent. of its no par value common stock (after deducting from the total common stock issued the shares under stock warrants and the fifteen (15) per cent. of the original issue of common stock allowed to Cities Service Company).

(c) To the Texas Connecting Company, fifty (50) per cent. of its no par value common stock (after deducting from the total common stock issued the shares under stock warrants and the fifteen (15) per cent. of the original issue of common stock allotted to Cities Service Company), part consideration for gas delivery contract.

(d) To Cities Service Company, fifteen (15) per cent. of the common stock of the Colorado Company originally issued, as consideration for contracts with the distribution companies in the cities of Denver and Pueblo and other places.

XIX. The plan of final financing which the parties now contemplate is shown on Table No. 1 attached hereto, which the Standard Oil Company (New Jersey) agrees to supervise, and it is agreed that the funds advanced or expenses incurred by the Southwestern Development Company and the Standard Oil Company (New Jersey) for purposes of the project including costs of incorporating and qualifying the new companies to be formed hereunder and shall be repaid with interest at six (6) per cent. from the date of each advance and/or expenditure out of the funds of the final financing.

XX. The Colorado Company is to have a board of seven directors, of which the Southwestern Development Company may elect three, the Standard Oil Company (New Jersey) three and Cities Service Company one. It is also agreed that the Colorado Company may name one director on each of the boards of the Texas Producing Company and the Texas Connecting Company.

XXI. These stipulations are to form the bases of agreements presently to be drawn embodying the terms hereof and to be executed by the parties hereto promptly when drafted in accord herewith.

Attest: _____ SOUTHWESTERN DEVELOPMENT CO.,
By N. K. Moody, President.

Secretary.

Attest: _____ CITIES SERVICE COMPANY,
By ERNEST H. JOHNSTON,

Secretary. Vice President.

Attest: _____ STANDARD OIL CO. (New Jersey),
By S. B. HUNT,

Secretary. Vice President.

Amarillo-Denver Project

Financial Statement

Table No. 1

Capital Requirements First Ten Years

Colorado Company:

Consideration for purchase bonds Texas Producing Co.	\$ 6,665,000	
Consideration for purchase bonds Texas Connecting Co.	5,385,000	
Pipe Line Construction Program in Colorado	10,893,000	<u>\$22,943,000</u>

Capital Requirements First Year

Colorado Company:

Purchase of bonds of Texas Producing Co. for acquisition of field properties from Amarillo Oil Co., and interest on bonds	\$ 5,300,000	
Purchase of bonds of Texas Producing Co. to provide its working capital, new wells, miscellaneous, and interest on bonds	300,000	
Purchase of bonds of Texas Connecting Co. to provide it with working capital, main line construction, field lines, compressor station, telephone line, gasoline plant, miscellaneous, and interest on bonds	4,375,000	
Main and branch lines in Colorado, telephone line, working capital, miscellaneous, and interest during construction	8,925,000	<u>\$18,900,000</u>

Method of Financing:

Bonds, 20 year, 6%, Sold at par, Preferred Stock, 6%	\$18,000,000	
\$1,000,000 sold to Standard Oil Co. (N. J.) at par	1,000,000	
1,000,000 to Texas Connecting Co., part consideration.		
<u>\$2,000,000</u>		
Stock Warrants, 180,000 at not less than \$15	2,700,000	
Common Stock—Standard Oil Co. (N. J.) to pay for its allotment	1,000,000	
Out of earnings from time to time (unless bonds realize a premium)	243,000	\$22,943,000

Division of Shares of No Par Common Stock:	Shares.	Per Cent.
Stock Warrants	180,000	14.4
Southwestern Development Co., via Texas Connecting Co., for contracts and field properties	441,250	35.3
Standard Oil Co. (N.J.) for \$1,000,000 cash	441,250	35.3
Cities Service Co. for city gate contract	187,500	15.
	<u>1,250,000</u>	<u>100.0</u>

(*) Suggested \$5,300,000 be retired in 20 years, and \$12,700,000 on 10-year basis in the sinking fund.

Requirements of the Three Companies, First Ten Year Period, in Detail

Texas Producing Company	
New wells	\$ 1,300,000
Interest during construction	5,000
Working capital	60,000
	<u>\$ 1,365,000</u>

Texas Connecting Company	
88 miles main line	\$ 3,000,000
Field station and gasoline plant	1,050,000
Field lines	790,000
Telephone line	80,000
Well lines	335,000
Interest during construction	110,000
Working capital	20,000
	<u>\$ 5,385,000</u>

Colorado Company	
Payment to Southwestern Dev. Co. for field	\$ 5,000,000
First year's interest thereon	300,000
Main and branch lines	8,245,000
Telephone line	123,000
Pump station	2,210,000
Interest during construction	250,000
Working capital	65,000
	<u>\$16,193,000</u>

Grand Total, Requirements First Ten Years	<u>\$22,943,000</u>
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First Year's Requirements of the Three Companies, in Detail

Texas Producing Company

Working capital	\$	60,000	
New wells		200,000	
Miscellaneous		30,000	
Interest during construction		10,000	\$ 300,000

Texas Connecting Company

88 miles main line	\$	3,000,000	
Field compressing station		350,000	
Field gathering lines		300,000	
Telephone line		80,000	
Interest during construction		105,000	
Working capital		20,000	
Gasoline plant		350,000	
Miscellaneous		170,000	\$ 4,375,000

Colorado Company

Payment to Southwestern Dev. Co.	\$	5,000,000	
One year's interest thereon		300,000	
Main and branch lines		8,245,000	
Telephone line		123,000	
Interest during construction		250,000	
Working capital		65,000	
Miscellaneous		242,000	\$14,225,000

Grand Total, First Year's Requirements			\$18,900,000
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The proposed Texas Producing Company, and the proposed Texas Connecting Company referred to in Exhibit 1, and whose functions it was agreed by the parties to Exhibit 1 could be performed by one company instead of two, were not in fact incorporated, but the functions proposed for these two companies were carried out by the formation of Canadian River Gas Company.

Testimony of P. C. SPENCER.

(Reading)—“My name is P. C. Spencer, and I reside at Scarsdale, New York. I am a lawyer by profession, and have been employed in that capacity by Consolidated Oil Corporation of New York, N. Y., since August 1, 1934.

“Since March 1, 1932, I have been a vice president and a director of Canadian River Gas Company (hereinafter referred to as ‘Canadian River’), one of the companies involved in these proceedings. Canadian River is a wholly-owned subsidiary of Southwestern Development Company (hereinafter referred to as ‘Southwestern’). I have been a director of Southwestern since April, 1932, and a vice president since March, 1935. I have acted as attorney for Southwestern and its subsidiaries in various matters since 1924.

“From July 1924 to May 1934, fifty-one per cent of the issued and outstanding capital stock of Southwestern was owned or controlled by Producers & Refiners Corporation (hereinafter referred to ‘P&R’). Since May 1934, Southwestern’s stock formerly held by P&R has been owned by Consolidated Oil Corporation (hereinafter referred to as ‘Consolidated’). Approximately forty-nine per cent of Southwestern’s capital stock has been at all times owned and held by The Mission Oil Company (hereinafter referred to as ‘Mission’) and affiliated interests. Mission has not been at any time affiliated with either P&R or Consolidated.

“I was first employed as an attorney for P&R and certain of its subsidiaries in 1922, and became general counsel of P&R and its subsidiaries about June, 1927. I continued in that capacity until May 1932, at which time I was appointed as one of the receivers for P&R, when it became involved in an equity receivership. The receivership was terminated and the receivers discharged in July 1934.

"Since 1932 I have been actively identified with the management of Southwestern and its subsidiaries, including Canadian River. Prior to that time I was generally familiar with the business and affairs of Southwestern and its subsidiaries by reason of my employment as attorney and general counsel for P&R.

"Southwestern was incorporated under the laws of the State of Colorado in July 1924. It is exclusively a holding company, owning capital stock and other securities of other companies engaged solely in the business of producing, transporting and/or distributing natural gas. In November 1935 Southwestern and Mission registered with the Securities and Exchange Commission as holding companies, pursuant to the provisions of the Public Utilities Holding Company Act of 1935.

"In 1926 Amarillo Oil Company, Southwestern's principal subsidiary, held oil and gas leases covering approximately 325,000 acres of gas land (proven and potential) in the Texas Panhandle field, on which it owned and operated about twenty gas wells with an open-flow capacity of approximately one-half billion cubic feet per day, which was substantially in excess of the volume required for the Amarillo market, which it was then supplying. It was obvious to Southwestern's management at that time that Southwestern could not realize upon these extensive gas properties and investments unless new markets of a substantial character could be developed. Markets in the immediate vicinity of the field were either occupied or too small to be attractive, and it became necessary to look for markets at greater distances. The transportation of gas by pipeline over long distances was in its infancy at that time. Neither Southwestern nor any of its subsidiary or affiliated companies had had any previous experience in transporting gas over greater distances than approximately one hundred miles. The City of Denver, located at a distance of approximately three hundred fifty miles from the field, and intervening territory seemed to be the closest available market for natural gas in substantial quantities. Moreover, Southwestern had learned from various sources that the City of Denver was actively interested in making natural gas available as an additional fuel supply to its residents and industries.

"During the year 1926, and possibly prior thereto, Minal E. Young was negotiating with officials of the City of Denver and other interested parties for the purpose of entering into a contract or contracts to bring natural gas to Denver from the Texas Panhandle field. In this connection, Amarillo Oil Company granted to Mr. Young an option covering the right to purchase gas for this purpose from its reserves in the Texas Panhandle field. Mr. Young's negotiations were unsuccessful, and the option expired without being exercised some time during the summer of 1926.

"At about this time, representatives of Southwestern approached representatives of Standard Oil Company (New Jersey) (hereinafter referred to as 'Standard') regarding the construction of a pipeline project to furnish gas to Denver and intervening territory. Standard was approached in this connection because it had had a long and successful experience in operating natural gas projects in other areas, and was fully capable of financing any project in which it might become interested. Standard's representatives became interested to the extent that they agreed to investigate the feasibility of the project. This investigation developed that two of the principal domestic markets in the territory (Denver and Pueblo) were then being supplied with manufactured gas by subsidiaries of Cities Service Company (hereinafter referred to as 'Cities Service'), which led to representatives of Cities Service being brought into the negotiations. Public Service Company of Colorado (hereinafter referred to as 'Public Service'), a Cities Service subsidiary, was distributing manufactured gas in Denver, but its franchise from the municipality had expired.

"On February 8, 1927, an ordinance was adopted by the qualified electors of the City and County of Denver granting a new gas franchise to Public Service for a period of twenty years, under the terms of which Public Service was required to substitute natural gas for manufactured gas, if an available supply of natural gas was found to be feasible for that purpose by the City. This ordinance was brought to the attention of Southwestern.

"As a result of the passage of the above-mentioned ordinance on February 8, 1927, and subsequent negotiations between Southwestern, Standard and Cities Service, a

Memorandum of Stipulations was entered into between the parties on April 5, 1927, which, subject to the approval of counsel the granting of a satisfactory natural gas franchise and rate ordinance by the City of Denver and other contingencies provided for the organization and construction of the Denver gas pipeline project substantially as now set up. This agreement has been introduced in these proceedings as Exhibit No. 1.

"During the spring and summer of 1927 various conferences were held between the parties to the agreement of April 5, 1927, and officials and representatives of the City of Denver, for the purpose of attempting to work out some mutually satisfactory basis upon which the proposed pipeline project might be constructed and natural gas supplied to the City of Denver. It was apparent to Southwestern officials at that time that the project could not be undertaken without a firm contract for the Denver market on a satisfactory price basis. In order to make the project economically feasible it was estimated that the Denver city-gate rate could not be less than forty cents per MCF for domestic consumption. In this connection, the City of Denver employed A. C. King, a consulting engineer of Chicago, Illinois, to make an investigation on its behalf and to submit a report covering the availability and economic feasibility of natural gas for Denver from the Texas Panhandle field as then proposed.

"Officials of Southwestern cooperated with Mr. King in facilitating his investigation of the natural gas reserves of Amarillo Oil Company in the Texas Panhandle field and of other features of the proposed pipeline project. As I recall, Mr. King completed his investigation and filed his report with the City of Denver sometime during the month of August, 1927, which was generally favorable to the proposed pipeline project, including the 40-cent city-gate rate. Southwestern was subsequently advised that on September 14, 1927, the City of Denver had adopted an ordinance reciting Mr. King's report, finding that an adequate supply of natural gas was available and economically feasible for Denver consumers, directing Public Service to supply such natural gas in substitution for the manufactured gas then being distributed, and fixing rates to be charged for such

natural gas based upon a city-gate rate of forty cents per MCF for domestic gas. The ordinance also imposed certain penalties upon Public Service in the event of its failure to carry out the mandate set forth therein.

Upon the passage of this ordinance, all parties to the agreement of April 5, 1927, immediately became active in carrying out their respective obligations thereunder. As a part of its obligations Southwestern caused Canadian River to be incorporated under the laws of the State of Delaware on February 24, 1928, all of its capital stock (25,000 shares without par value), excepting directors' qualifying shares, being issued to Southwestern. This company was organized by Southwestern to own and operate gas leases, wells, pipelines and other facilities for the production and transportation of natural gas with which to supply the Denver project market of Colorado Interstate Gas Company (hereinafter referred to as 'Colorado Interstate'), and the Texas markets of Amarillo Oil Company.

On March 31, 1928, Canadian River obtained a permit to transact business in the State of Texas as a foreign corporation for a period of ten years. This permit was renewed for an additional period of ten years on March 17, 1938.

At the first meeting of Canadian River's Board of Directors, held on March 27, 1928, resolutions were adopted authorizing the purchase of Amarillo Oil Company's gas rights and wells covering approximately 325,000 acres of land located in the Counties of Hartley, Oldham, Moore, Potter, Carson and Hutchinson, in the State of Texas, for the sum of \$5,000,000, subject to approval of titles by counsel. (Number of gas wells—26.) The consideration to be paid by Canadian River to Amarillo Oil Company for such gas rights and properties had been previously negotiated and fixed by representatives of Southwestern, Standard and Cities Service in the Memorandum of Stipulations dated April 5, 1927. In addition to the properties sold to Canadian River for \$5,000,000, Amarillo Oil Company acquired or constructed other properties between May 1, 1927, and June 1, 1928, for the account of Canadian River, which were subsequently transferred to Canadian River at cost. The

expenditures so made, together with interest on capital employed, totaled approximately \$1,000,000.

"During the fall of 1927 and the spring of 1928, representatives of Southwestern and Amarillo Oil Company were busily engaged in satisfying various title requirements of counsel in connection with gas rights and wells to be conveyed to Canadian River, including the discharge of certain outstanding mortgage liens. These gas rights and properties were finally cleared and conveyed to Canadian River by Amarillo Oil Company in the summer of 1928. Prior thereto, Canadian River had commenced drilling additional wells, constructing gathering lines and a transmission line from the field (Bivins Station) to Clayton, New Mexico; also a compressor plant and gasoline absorption plant at Bivins. The first deliveries of gas by Canadian River to Colorado Interstate were made in the summer of 1928.

"In order to finance the acquisition of properties, the drilling of wells and the construction of necessary gas pipeline and other facilities, on June 5, 1928, Canadian River's Board of Directors and stockholders authorized its officers to issue the company's First Mortgage Twenty-Year six per cent Sinking Fund Gold Bonds in the principal amount of \$11,000,000 pursuant to an Indenture with Equitable Trust Company as Trustee (now Chase National Bank of the City of New York) successor trustee. Canadian River issued substantially all of these bonds to Colorado Interstate during the year 1928 for the purpose of repaying advances made on its behalf by Colorado Interstate.

"Canadian River's gas sales through the operation and use of these properties and facilities are limited to three individual customers, i. e., Colorado Interstate, Amarillo Oil Company and Clayton Gas Company, all of which are covered by privately negotiated contracts, as shown in Exhibit No. 15. Deliveries to Colorado Interstate are made at two points, (1) Clayton, New Mexico, for the Denver pipeline market, and (2) Gray, Oklahoma for the Chicago pipeline market. Deliveries to Amarillo Oil Company are made at the well for the City of Amarillo and Channing markets and at different points along Canadian River's pipeline system for Dalhart, Hartley, and Texline, Texas.

markets. Deliveries to Clayton Gas Company are made at the Clayton town-border through a lateral from the main line. The price of all gas sold to Colorado Interstate is computed on a cost basis as provided in the contract between the parties, which is also true of sales to Amarillo Oil Company as to gas purchased for the Amarillo and Channing markets. Gas delivered to Clayton Gas Company, and also gas delivered to Amarillo Oil Company for Dalhart, Hartley and Texline, Texas, markets, is sold on a fixed price schedule (not cost) as agreed upon by the parties.

"As a part of the consideration for Canadian River's agreement to sell gas to Colorado Interstate on a cost basis, Colorado Interstate issued to Southwestern, as the nominee of Canadian River, 42-1/2 per cent of its authorized common stock and \$1,000,000 par value of authorized preferred stock.

"Under the terms of its gas sales agreement dated January 3, 1928, with Colorado Interstate, Canadian River is not permitted, except with the consent of Colorado Interstate to make any contract for the sale of gas to others than those specifically mentioned in the agreement, which 'may impair its capacity to produce natural gas for delivery' to Colorado Interstate, and excepting the Amarillo Oil Company markets, the requirements of Colorado Interstate have first call and preferential rights to all gas, properties and facilities of Canadian River. Moreover, the indenture under which Canadian River's bonds have been issued provides that it will not modify or consent to the modification of its gas sales agreements with Colorado Interstate and Amarillo Oil Company without first obtaining the consent of the Trustee thereto; that the company will not make any sales of gas other than those for which provision is made in the above-mentioned contracts until it shall first have obtained the consent of the Trustee thereto. (The Trustee is required to grant such consent if the transaction is approved in writing by the holders of a majority of the bonds then issued and outstanding.) Canadian River's obligations under these provisions have been at all times observed and complied with.

"The terms and conditions of the Colorado Interstate

contract were negotiated and agreed upon in the first instance by representatives of Standard and Cities Service on behalf of Colorado Interstate, and representatives of Southwestern on behalf of Canadian River. The terms and conditions of the sales contracts with Amarillo Oil Company were negotiated and agreed upon by the parties with the advice, consent and approval of Colorado Interstate. The gas sales contract with Clayton Gas Company was originally entered into by Colorado Interstate and was negotiated by representatives of Southwestern on behalf of Clayton Gas Company, and representatives of Colorado Interstate on its own behalf.

"Canadian River has never filed any schedule of rates or prices for the transportation or sale of natural gas with any public body except Federal Power Commission, and in that instance it was done under protest with a full reservation of all legal and constitutional rights. Excluding one or two emergency transactions of minor importance, it has never offered to sell or sold gas to any parties except the customers heretofore named, and it has never been a purchaser of gas in the field. It has produced and owned all of the gas which it has transported, and it has never transported gas for others for hire.

"Canadian River has never exercised the right of eminent domain in connection with the condemnation of rights of way, or otherwise. Its pipelines in some instances do cross public highways. In all cases rights of way have been acquired and paid for through private negotiation. It has never used the streets and alleys of any municipality, except in the City of Amarillo for a telephone line restricted to its own business use. It has not obtained rights of way from any state or other public body which were conditioned upon pipeline operations as a common carrier.

"Canadian River has no public grants or franchises of any character whatsoever, except its Certificate of Incorporation from the State of Delaware and its permit to do business as a foreign corporation in the state of Texas.

"In the year 1936 the Railroad Commission of Texas demanded that Canadian River and other gas pipeline companies file with it an annual report as a 'public utility,' as

required under Article 6056 of the Texas statutes—otherwise suit would be filed against the companies immediately by the Attorney General. Since the Texas courts had not passed upon the validity of this statute, and Canadian River did not then desire to engage in litigation with the state on the subject, the company did file a partial report as a 'gas utility' with the Railroad Commission at that time, but did so under protest, contending that it was not a 'public utility' for any purpose and fully reserving its constitutional and legal rights. Similar reports for succeeding years have been filed by Canadian River, subject to the same reservations. Exhibit No. 21 is the facing sheet, together with reservations of constitutional and legal rights attached thereto, of such report for the year 1938,—which is typical of such filings for all years commencing in the year 1936.

Canadian River's business is divided into three principal operating functions—production, gathering, and transportation of natural gas. It does not occupy a monopolistic or exclusive position in any one of these fields, because of the facts hereinafter stated. The production and sale of natural gas, particularly in the Texas Panhandle field, is a highly competitive undertaking. Canadian River now holds approximately 315,000 acres under gas leases, and owns and operates about 91 gas wells thereon. The Texas Panhandle field is approximately 125 miles in length, containing approximately one and one-half million acres, of which approximately two-thirds are estimated to contain sweet gas and one-third sour gas. There are more than 1,650 producing gas wells in the field. There are 50 oil pools scattered along the north side of the field, with more than 4,200 wells producing oil and gas. Estimates of original gas reserves in this field have ranged from fifteen trillion cubic feet to somewhere in the neighborhood of twenty-five trillion cubic feet, of which approximately two-thirds was sweet gas. During all the years of Canadian River's existence, there never has been a time when producers in the field were not seeking markets for their gas from both connected and unconnected wells. In fact, during most of this period producers have been attempting to compel others to buy their gas by law or otherwise.

"Pipeline rights of way and the facilities necessary for the transportation of gas are available to all who are willing and able to assume the hazards, and pay the costs involved. Nine companies supplying domestic and industrial gas to Chicago, Minneapolis, Denver, Dallas, Des Moines and other cities have acquired leases in and operate pipelines out of the Texas Panhandle field. The business of transporting and selling gas in the territory occupied by Canadian River is open to all.

"Commencing in the year 1931, several so-called conversation statutes have been enacted by the Texas State Legislature and orders issued pursuant thereto by the Texas Railroad Commission, which were designed to compel the gas pipeline companies to share their pipeline markets by purchasing gas from other producers in the field with unconnected wells. In each instance Canadian River has opposed the validity of these statutes and orders, either by filing an action against the Railroad Commission of Texas or by associating itself with others similarly situated in the prosecution of such an action. This position was taken by Canadian River because it believed that all of these statutes and orders represented an attempt to invade its private status and to abrogate and imperil its private contracts. The company's position has been consistently upheld by the courts."

(Vol. I. pp. 56-71.)

Direct Examination (Continued).

By Mr. Keffer:

Q. I have just one or two questions. Mr. Spencer, you state in your narrative statement that Amarillo had conveyed to Canadian River approximately 325,000 acres of lease-holds, I think in 1927 or whenever that occurred. Now there are other matters in the record, I think some reports have been filed that indicated that Amarillo Oil Company had at that time something in the nature of 350,000 acres. Is there any discrepancy in those two statements?

A. Well, there is an apparent discrepancy of some 25,000 acres.

Q. What is the occasion for that?

A. The figure which I use of approximately 325,000 acres excludes acreage which Amarillo Oil was under contract to sell to the United States government for helium purposes and that acreage, as I recall, approximated twenty to twenty-five thousand acres.

Q. That's right, and that was not included in your figure of approximately 325,000 acres?

A. That's right, that particular acreage was subsequently conveyed to the United States Government as a basis for their helium operations near Amarillo, Texas.

Q. Now, one other thing. Are you familiar, Mr. Spencer, with the fact that in Texas the statutes of that state with respect to the payment of franchise taxes by corporations provides one means for computing the tax on general business corporations, and another means for computing the franchise tax on public utility corporations?

A. I am.

Q. Do you know under which statute the franchise tax for Canadian River has been computed by the State of Texas?

A. The franchise tax of Canadian River Gas Company has been computed on the basis of a general business corporation.

Mr. Keffer: That's all.

Cross Examination.

By Mr. March:

(Vol. I, pp. 72-73.)

Q. Mr. Spencer, how many corporations are you a director of?

A. Approximately?

Q. Yes, sir.

A. I would say less than ten.

Q. Will you name those corporations for the record?

A. Well, starting with the Southwestern Development Company, a holding company system—is this question confined to directorship?

Q. Directorship and officership.

A. I am an officer and director of Southwestern Development Company, the parent company. I am also an officer and director of the following subsidiaries of the Southwestern: West Texas Gas Company; Canadian River Gas Company. I am an officer but not a director of the Amarillo Oil Company. I am a director of the Colorado Interstate Gas Company. I am a director of the Natural Gas Pipeline Company of America, and the Texoma Natural Gas Company. I am an officer and director of the Parcomis Oil and Gas Company, and there may be one or two other small companies which have no connection with the natural gas companies with which I may be associated as an officer or director but I don't have the record before me at the moment. I am giving these from memory, Mr. March, and I ask permission to correct the record if I have omitted anything or misstated anything.

Q. You first became connected with the natural gas business where?

A. My first contacts with the natural gas business occurred by the time I became employed at the Producers and Refiners Corporation.

Q. You were employed as counsel employed in the legal department as an employee?

A. In the first instance I was retained as counsel in Wyoming for the Producers and Refiners Corporation. I was not an employee at that time.

Q. But you were subsequently employed in the legal department?

A. I subsequently became general counsel and an employee of Producers and Refiners Corporation.

Q. What person employed you?

A. I was employed by the president of the company at that time.

Q. Who was that?

A. Mr. L. R. Crawford.

Q. He employed you as general counsel?

A. He did.

Q. How long did you remain in that capacity?

A. I remained in that capacity until May 1932.

Q. Who was your immediate superior during that period?

A. Mr. Crawford, the president, was chief executive of the company, and I reported to him as well as the Board of Directors, of course.

Q. Who was Chairman of the Board of Directors?

A. We had no Chairman of the Board of Directors. As I recall the President of the company acted as Chairman of the Board of Directors meetings.

Q. Mr. W. S. Fitzpatrick, was he on the Board?

A. W. S. Fitzpatrick was a member of the Board until the fore part of 1932.

Q. What company controlled the Producers and Refiners Corporation during that period?

A. From about 1923 until the fore part of 1932, a majority of the outstanding common stock of Producers and Refiners Corporation was owned and held by the Prairie Oil and Gas Company.

Q. When did you become a director of the Producers and Refiners Corporation?

A. I never was a director of the Producers and Refiners Corporation.

Q. Were you an employe?

A. An employe, that's correct.

Q. Who controlled the Prairie Oil and Gas Company?

A. If you mean by that any particular group or groups controlled it, my impression is that it was not so controlled by any group or groups.

Q. You do not know that?

A. I do not.

Q. Do you know who was the largest stockholder in the company during that period?

A. Not of my own knowledge, no.

Q. What was the general understanding as to the largest stockholder?

A. I wouldn't be able to testify on that. You are covering a very long period on that, Mr. March, during which the situation might have changed.

Q. Did you ever know whether or not the Rockefeller interests held any stock in the Prairie Oil and Gas Company?

A. I think it was common knowledge that they did.

Q. For a long period of years, until about 1932?

A. I think so. If you are speaking of Rockefeller inter-

ests as Mr. John D. Rockefeller, Senior, or Mr. John D. Rockefeller, Junior, and various—

Q. Trusts, set up by them.

A. Trusts or charitable foundations they may have set up. I think from time to time during all the period which we are discussing in here some one or more of them held stock in the Prairie Oil and Gas Company from time to time.

Q. Who were probably the largest stockholders of the group?

A. They may have been, Mr. March. I couldn't testify to that.

Q. What company did you first become a director of?

A. Well—

Q. I mean subsequent to your employment with the Producers and Refiners Corporation.

A. And you mean also companies connected with—

Q. Well, say any company to begin with, subsequent to your employment by Producers and Refiners Corporation?

A. As general counsel?

Q. As general counsel.

A. That's going a long ways back, but it's my recollection at the moment that the first company—the first companies with which I became associated actively as a director were Southwestern and certain of its subsidiaries concerning which I have testified.

Q. How much stock did you own in the Southwestern Development Company?

A. Did I own?

Q. At the time you became a director.

A. I did not own any stock at that time nor do I own a share of stock in the Southwestern Development Company at the present time.

Q. Who asked you to become a member of the Board of Directors?

A. Of the Southwestern Development Company?

Q. Yes, sir.

A. About the time that I became a director of the Southwestern, I also became receiver for the Producers and Refiners Corporation, and as to those positions that I was elected to during the time I was receiver, it was at my own

Q. 1932?

A. Yes, and that is the same year that I became receiver for Producers and Refiners Corporation.

Q. That was the first directorship that you held of any importance?

A. It is my recollection that that is correct.

Q. And you asked to become a member of the Board of Directors?

A. I am not sure whether my election to the Board of Southwestern Development Company preceded my appointment as receiver or followed it. In the event it preceded it, I was requested to go on by the President of the Producers and Refiners Corporation.

Q. Who was that?

A. Mr. L. R. Crawford.

Q. Whom did you feel that you were responsible to on that Board?

A. As a member of the Board?

Q. Yes.

A. I was as a member of the Board, I felt it a responsibility to all of those that were interested in the Southwestern Development Company as stockholders and creditors and holders of its bonds or other obligations.

Q. You felt responsible to the people that were paying you, didn't you?

A. Well, any time I become a director of a corporation, Mr. March, I feel personally that there are certain obligations that are there and must be carried out whether they pay me or whether they don't. That is a part of the responsibility you assume when you become a director.

Q. Yes. I think that is right, and I think you really did try to conscientiously do that.

A. I certainly did.

Q. You understand that I am not trying to say that you didn't. You understand that clearly.

Here's the thing: You were sitting on the Board of the Producers and Refiners Corporation as a receiver and as an employee of that company.

A. An employee.

Q. I believe there were certain business transactions between those two companies, the sale of properties—

A. The sale of properties from Producers and Refiners Corporation to the Southwestern group occurred long before the time I became a director. Those transactions occurred in 1924, I believe—'25.

Q. There were no particular business transactions of any importance between these two companies while you were serving on the Board of Directors of Southwestern Development Company?

A. I think Producers and Refiners Corporation had guaranteed some obligations of Southwestern. I can't recall for the moment of any business of any major importance that occurred at the time or subsequent to the time that I became a director of Southwestern, between it and Producers and Refiners Corporation. There may have been. I don't want to be bound by that. There may be. There may have been some business come up that others would consider material or substantial that I don't recall at the moment.

Q. If anything did come up like that you would represent the interests of Southwestern Development Company over the interests of Producers and Refiners Corporation?

A. Well, if I couldn't represent the interests of the Southwestern Development Company in any transaction in which I had a dual relationship I would resign one position or the other and put my allegiance where I thought it ought to be. I wouldn't try to act in two capacities.

Q. I see. Amarillo Oil Company, you were a director of that company? When did you become a director of it?

A. I am not a director of Amarillo.

Q. You are an officer?

A. An officer.

Q. When did you become an officer of that company?

A. May I refer to my notes?

Q. Certainly.

A. I don't seem to have it right here, but my memory is it was subsequent to 1932.

Q. Subsequent to 1932?

A. Yes.

Q. Amarillo Oil Company was in 1928 and still is a wholly-owned subsidiary of the Southwestern Development Company?

A. That's right.

Q. When did you become a director of the Canadian River Gas Company?

A. 1932.

Q. That company is likewise a wholly-owned subsidiary of Southwestern Development Company?

A. That is right.

Q. You were quite actively engaged in 1928, as I believe you testified, in the organization of this pipeline project and in the organization of Canadian River Gas Company?

A. I think that description is a little imperfect and perhaps a little too broad. I was acquainted with it and had knowledge of it from time to time but I wouldn't say that I was very active then in carrying it out.

Q. You weren't active in carrying it out, you just had knowledge of it?

A. That's right.

Q. Who was the main person responsible for carrying it out?

A. You are speaking now of the organization?

Q. Yes, the executive down there who was taking the matter in hand and carrying out the organization?

A. Well, I think the executives of Southwestern who were most active in that respect were Mr. Moody and Mr. Fitzpatrick.

Q. And they represented who?

A. They represented Southwestern.

Q. And they were likewise directors and officers of the Producers and Refiners Corporation?

A. They were both directors of the Producers and Refiners.

Q. Officers and directors of the Prairie Oil and Gas Company also?

A. That's right.

Q. They were representing the same interests you were, weren't they?

A. Not exactly.

Q. They were representing, I believe you said, the Producers and Refiners who had fifty-one per cent of the stock of Southwestern?

A. That's correct.

Q. That was enough to elect a majority of the Board of Directors?

A. Yes.

Q. You were an employe and had two directors of these two companies serving actively in the organization of the Canadian River Gas Company?

A. I was an employe of the Producers and Refiners.

Q. That's right.

A. I was not an officer or director of Southwestern or Canadian River at that time.

Q. Yes, I understand. The transaction, I believe you testified to some extent whereby certain oil leases were transferred from Amarillo Oil Company to Canadian River Gas Company shortly after the organization of Canadian River Gas Company?

A. Yes, sir, I am generally familiar with it.

Q. Do you know how much those leases cost the Amarillo Oil Company?

A. Approximately?

Q. Approximately.

A. I have a figure in my mind from memory what the book cost of these leases—I mean the book cost of Amarillo Oil Company was at the time they were transferred. How the book cost was made up or what adjustments were made in it, I am not familiar with that. I have a recollection that the cost—did you ask me to give it or did you ask me if I had any knowledge of it?

Q. Well, what is it?

A. Will you read back that, please?

(The record referred to was read by the reporter, as set forth above.)

The Witness: —of the gas rights—costs of the gas rights and properties transferred by Amarillo Oil Company to Canadian River in 1928 appear on the books of Amarillo Oil Company as having an investment value based upon cost of approximately \$1,700,000. I think that's it.

By Mr. March:

Q. I won't hold you to exact figures—approximately that?

A. I think approximately, that is correct.

Q. What was the purchase price? How much did Canadian River pay Amarillo Oil Company for these leases?

A. Five million dollars.

Q. Five million dollars?

A. Yes, sir.

Q. At this time both of these companies were wholly-owned subsidiaries of the Southwestern Development Company?

A. That's correct.

Q. That five million dollars, did that go into the capital structure of the Canadian River Gas Company?

A. The cost of the leases?

Q. Yes.

A. It went into the capital structure of the Canadian River Gas Company, that's correct.

Q. Did any money change hands?

A. Certainly did—cash.

Q. From whom to whom?

A. From whom to whom—from Canadian River Gas Company to Amarillo Oil Company, five million dollars in cash.

Q. Where did the Canadian River Gas Company get that money?

A. The money was advanced to the Canadian River Gas Company by the Colorado Interstate Gas Company.

Q. Where did they get it?

A. I think that the money was put up at a time before Colorado Interstate was fully organized to do business. Therefore, I think it was advanced on a temporary basis to Colorado Interstate by the Standard Oil Company (New Jersey).

Q. When did you first become a director of the Colorado Interstate Gas Company?

A. I can give you these dates pretty accurately—

Q. I mean approximately. You don't have to be confined to—

A. I believe it was in 1934.

Q. Do you have any stock in the Colorado Interstate Gas Company?

A. I have no stock in that corporation.

Q. Who asked you to become a director of that company?

A. The officers of Southwestern Development Company asked me to accept a ~~directorship~~ on that Board.

Q. What officer?

A. Mr. A. R. Jones who was vice president and Mr. N. K. Moody who is president.

Q. Did you sign proxies to vote stock?

A. I don't believe I ever signed a proxy for voting stock of Southwestern in Colorado Interstate. I may have, but I don't recollect that I ever did.

Q. What other common directors are there between those two companies, Southwestern Development and Colorado Interstate—pardon me, Canadian River and Colorado Interstate?

A. May I have the question, please?

(The question referred to was read by the reporter, as set forth above.)

The Trial Examiner: You mean at this time, Mr. March?

Mr. March: At this time.

The Trial Examiner: Or prior to when these transactions occurred.

The Witness: Mr. Moody and Mr. A. R. Jones and I are all directors of the Canadian River Gas Company and we are also directors of the Colorado Interstate Gas Company. I think that's correct.

By Mr. March:

Q. I believe one hundred per cent of the bonds of the Canadian River are owned by the Colorado Interstate?

A. They are owned by Colorado Interstate but pledged as collateral security under its bond indenture.

Q. I note here in your testimony, referring to your written statement at Page 8 and 9 and 10, you state here—I quote—you are discussing the eleven million dollars in bonds that were issued and the indenture under which they were held, the Chase National Bank. You stated here:

“Trustee is required to grant such consent if a transaction is approved, in writing, by the holders of a majority of the bonds, then issued, outstanding.”

That is, as I understand that, the Canadian River can't

sell gas to anyone else other than those stipulated in the contract unless the trustee and secondly the bond holders, the persons holding a majority of the bonds, approve. In the final analysis, the bond holders are the supreme arbitrator of that matter. They have a supreme say.

A. I don't want to become unduly complicated, but it's not quite that simple, Mr. March. Let me see if I can state it as it is. If the Canadian River wanted to sell gas to any new customer, it would have to get the approval of the trustee under its bond indenture or the approval of the holder of the majority of its bonds which would amount to the same thing, but before you can get that, however, you must remember that the bonds of Canadian River are pledged as collateral security under the bond indenture of Colorado Interstate, and I believe it is also true that you have to get the approval of the trustee or the bond holders of the Colorado Interstate indenture in order to change the situation.

Q. Why was that written into an indenture, that provision written in there to keep the Canadian River from selling any gas to anyone else?

A. Well, I didn't insert the provisions, Mr. March. My evidence probably isn't very good. I would say that it was inserted in there to make certain that the gas reserves and facilities of Canadian River Gas Company would always be preserved to do the job they were expected to do with respect to this Denver pipeline and not weakened or diluted by any other activities without the consent of those who were primarily interested in that.

Q. Now, Mr. Spencer, you are sitting on the Board of both of these companies and the question comes up as to whether or not you are going to let Canadian River sell gas to certain other parties, and you are sitting over on Colorado Interstate Board and you have got to look after the interests of both Boards. Now who do you represent? Say that situation comes up?

A. All right, let's say that situation comes up. I am sitting on the Board of Canadian River and I think this is the wise thing for Canadian River to do, is, to sell gas to somebody else. In order to do that we have to comply with certain contractual requirements. If I thought it was the best thing for Canadian River, I would vote for it.

Q. If you thought it was the best thing for the Canadian River Gas Company you would vote for it?

A. That's right.

Q. Regardless of the interests of Colorado Interstate?

A. That's right. I haven't come to that yet.

Q. Now we come down to Tëxoma Natural Gas Company which I understand has a contract with the Canadian River whereby twenty-five per cent of the requirements of natural gas must be served by Canadian River. Now you are also a director of the Natural Gas Pipeline Company of America?

A. That's right.

Q. And say that they really need some more gas and it is to their interests that they get more gas and you are already sitting up there on the Board of Colorado Interstate and the Board of Canadian River. Now what do you do?

A. Well, I do this, Mr. March, as anyone else has to do where he is representing various companies in a holding company group, conflicting interests. I have to make up my mind where my real interest is and where my real responsibility is and having adopted that position if I have interests there that conflict with any other job, directorship or office that I may have, I would consider it as my duty to resign the other job or the other directorship, or possibly refrain from participating in the transaction on the other side of it and at all times fully disclose that I might have a dual relationship to all other parties that were working with me.

Q. You would have to locate your real interests, then, first?

A. I think so.

Q. That's what I'm after, your real interests, what real interest you represent. The people you really represent are the ones from whom you get your money, whom you are paid by?

A. My salary is paid by Consolidated Oil Corporation.

Q. Yes, and I believe Consolidated Oil Company is the successor company—took over Producers and Refiners Corporation, in 1932.

A. Consolidated Oil Corporation acquired the stock holdings of Southwestern, formerly held by the P&R by public sale conducted by the receivers. They own it.

Q. And when that happened in 1932—

A. It happened in 1934.

Q. Pardon me—it took over these properties and then instead of being an employe of Producers and Refiners Corporation you became an employe of Consolidated Oil Corporation?

A. That's correct.

Q. And you have since had a similar relationship to the Colorado—to the Consolidated Oil Corporation as you had previously with the Producers and Refiners Corporation?

A. That's correct.

Q. So your real interests there and the real people that hold the stock finally are the Consolidated Oil Corporation and you work for them and you serve as a director and represent their interests on these Boards?

A. Well, that question has a lot of things in it. Let me make this statement, Mr. March: I held practically all the positions that I now hold with Southwestern and its subsidiaries before I ever became an employe of Consolidated.

Q. Yes, I know.

A. Well, let me—

Q. Yes.

A. And I have continued to hold those positions since I became an employe of Consolidated Oil Corporation in August 1934. Now since 1934 to date I do not recall one single thing that Consolidated Oil Corporation has asked me to do or refrain from doing in connection with any business or activity of Southwestern or any of its subsidiaries.

Q. Did you ever consult any officers or directors of that company?

A. I have talked over the business and affairs of this company, yes, and given them such information as I thought might be of interest to them from time to time.

Q. Whom do you report to in Consolidated?

A. I report to G. T. Stanford, general counsel of the corporation.

Q. Whom does he report to?

A. He reports directly to the Board of Directors and such other officers as he may have worked for from time to time.

Q. In other words, when Producers and Refiners, the corporation was taken over by Consolidated, you kind of

went along with the properties and you likewise continued to hold your positions in all of the subsidiaries of Southwestern Development?

A. I think that's correct.

Q. One other question about Producers and Refiners. I want to ask is this: Who financed that company? What interests financed it? Where did they get their money to work on?

A. Well, that's a long way back too, Mr. March. I'll do the best I can with it. The corporation was organized in 1918, somewhere along in there, and was originally financed through the sale of capital stock to the public and also I think it had a bond issue outstanding at one time which was sold to the public.

Q. The money was advanced. Who were the particular people that had those bonds—furnished the money and got those bonds—Prairie Oil and Gas?

A. No, the principal financing of Producers and Refiners Corporation was all concluded before the Prairie Oil and Gas Company acquired the majority of the interests of its outstanding capital stock. As I recall it the only part Prairie Oil and Gas Company had in financing the Producers and Refiners Corporation was this: First it guaranteed some notes in the principal amount of ten million dollars that Producers and Refiners obtained from New York banks and later than that I think it advanced on open account some million to three million dollars from time to time to carry on current operating expenses. That I think is all that Prairie did in connection with the financing of Producers and Refiners operations.

Q. Now who controls the Consolidated Oil Corporation of which you are an employee? What company controls it? What persons?

A. Consolidated Oil Company is owned by some eighty-five thousand stockholders. I am sure there is no one stockholder or group of stockholders that exercises any control.

Q. Did you ever see the stockholders' list?

A. No.

Q. Who prepared the registration statement to the SEC?

A. I had something to do with it—which registration statement?

Q. Consolidated Oil.

A. Well, it has filed several of them.

Q. Well, any of them.

A. I filed one. You are talking about A-2 statements?

Q. Yes, and others.

A. K-10. I assisted in the preparation of A-2 registration statement for the Consolidated in 1937, I believe.

The Trial Examiner: What is the A-2 registration, Mr. Spencer?

The Witness: The A-2 registration statement is a statement that must be filed by any corporation proposing to offer securities to the public.

The Trial Examiner: Oh, yes.

The Witness: Under the Securities Act of 1933.

By Mr. March:

Q. Do you know whether or not the Rockefeller interests held any stock in Consolidated Oil Corporation?

A. I think John D. Rockefeller, Junior does hold some stock. If you have a copy of that statement, the statement of stockholders in it, I'd be perfectly willing to verify it.

Q. I don't have it. I'll get it.

A. I don't have it with me. I'm perfectly willing to verify it as correct.

Q. You are willing to state that John D. Rockefeller, Junior and some of the Rockefeller foundations or voting trusts hold considerable stock in Consolidated Oil Corporation?

A. I doubt if any of the foundations or trusts hold any stock at this time.

Q. John D. Rockefeller, Junior holds voting stock?

A. Voting stock, yes, at least he did the last time I had any knowledge of it.

Q. When was that?

A. I remember seeing it in one of the statements that you are referring to that he was one of the principal stockholders.

Q. He is one of the principal stockholders of the Consolidated Oil Company?

A. That's correct.

Q. And has been since 1932?

A. I think that's correct, Mr. March. If I had a copy of that I would be willing to verify it as correct.

Q. Now there is another little matter here I wanted to clear up. You said you had these directorships a holding company system—

A. Including what?

Q. Holding company system, and it was your problem.

A. Yes.

Q. As I understand you are kind of a coordinator here to bring all of the eggs together in one basket. What I mean, you are kind of a coordinator here as far as these companies are concerned?

A. I think you could say that so far as Southwestern and its subsidiaries are concerned, yes. I do try to coordinate their activities through my various jobs, to the best interests of all of them.

Q. Is your job with Texoma and Natural Gas Pipeline Company the same?

A. No, it isn't.

Q. How much stock do you hold in those companies, either one of them?

A. Southwestern owns 13.31 per cent, approximately, of the outstanding capital stock of Natural Gas Pipeline Company of America and 26.62 per cent, approximately, of the outstanding capital stock of Texoma Natural Gas Company.

Q. You represent that stock?

A. I am elected to the Board by reason of that stock ownership.

Q. You feel it your responsibility primarily to those stockholders?

A. After you get on the Board, Mr. March, you should represent all of the stockholders.

Q. Represent all of the companies in spite of the fact that they have conflicting interests, too, as you have stated?

A. If they have conflicting interests you have got to decide where your love lies and take it and reject the balance of it.

Q. A man's love lies where he gets his money from, isn't that true?

A. If I was called upon to make a decision as to which Board I would sit on and try to carry out my obligation as between the Natural Gas Pipeline Company and Southwestern, it wouldn't take me long to decide. I should think that I would resign as director of Natural Gas Pipe, if I couldn't perform my obligations there, and I would remain as a director of Southwestern.

Q. That is all of that phase.

Now this other I want to come back to. I want to take the Mission Oil Company. You state here—I quote on Page 1, and you also stated in the record:

“Mission has not been at any time affiliated with P&R or Consolidated.” Is that true?

A. That's correct.

Q. Where does Mission come into this picture at?

A. The Mission Oil Company which is a Kansas corporation—it is well to make that distinction because there are other Mission corporations—is the owner and holder of approximately 47.2 per cent of the issued and outstanding capital stock of Southwestern and has been since its organization in 1924.

Q. How much do you own in the Mission Oil Company?

A. I own no stock in the Mission Oil Company.

Q. That stock is just held in your name?

A. Sir?

Q. That stock is just held in your name?

A. Yes, sir.

Q. You do have some stock held in your name, though?

A. I do, Consolidated Oil Corporation being the beneficial owner.

Q. Consolidated Oil Corporation being the beneficial owner?

A. Right.

Q. About how much per cent of the voting stock?

A. Less than five per cent. I can't give you the exact amount of shares, but it is less than five per cent.

Q. Then there is some affiliation between Mission Oil and Consolidated Oil Corporation, some small affiliation there?

A. Well, I think that is correct. There is, and perhaps

my statement is a little too broad. The affiliation I have in mind there is not enough ownership, not enough ownership to make it affiliated as defined by the Public Utility Holding Company Act.

Q. You mean it didn't have ten per cent?

A. That's right.

Q. Where did this Parcomis Oil Company come into the picture? You say you are a director of that company, I believe.

A. Parcomis Oil and Gas Company is a company that owns the oil rights underlying the leases upon which the Canadian River Gas Company holds the gas rights.

Q. How come you are on the Board of Parcomis?

A. Well, I guess I am there because I happen to know something about it and have sort of grown up with it, in later years.

Q. You grew up with it—

A. It is a company that is practically inactive, Mr. March.

Q. You grew up with this transaction whereby the oil rights of these gas properties of Amarillo oil—Amarillo Oil Company was transferred over to Parcomis?

A. Yes, I was familiar with that.

Q. Just what was that transaction? You weren't a director of that company at that time, were you?

A. No, I wasn't. I became a director later.

What was the question, please?

(The record referred to was read by the reporter, as set forth above.)

The Witness: The oil rights underlying these leases; in other words, the Canadian River Gas Company owns the gas rights; oil rights were transferred to the Parcomis Oil and Gas Company by the Amarillo Oil Company. At that time all the outstanding capital stock of Parcomis Oil and Gas Company was held by Southwestern Development Company. Subsequently, Southwestern Development Company distributed the stock of Parcomis Oil and Gas Company as a stock dividend so that Parcomis then ceased to be a subsidiary of Southwestern. The stockholders of Southwestern at that time received the stock of Parcomis. There have been some changes in the stock ownership since that time.

Q. What was the consideration here for the transfer of these oil rights to Parcomis?

A. I don't recall exactly. My recollection is that it is something less than one hundred thousand dollars, but if that is too far off, may I correct it?

Q. Yes, certainly, you may correct any of this. The Trojan Oil and Gas Company, where does that come into the picture at?

A. The Trojan Oil and Gas Company owns approximately 47.2 per cent of the stock of Parcomis. It was originally, I believe, organized and set up by the same parties who organized and set up Mission, although since their incorporation there is considerable diverted interests in their stock ownership, at the present time so I am informed.

Q. You don't know who controls the Trojan Oil and Gas Company? what company?

A. So far as I know the principal owners of the Trojan stock are Mr. A. R. Jones and Mr. Frank E. Jones of Kansas City.

Q. Those people are also large stockholders in the Mission Oil Company?

A. Who are also large stockholders of Mission; that is correct.

Q. How do you vote that stock over there in Mission?

A. How do we vote it?

Q. How do you vote it, yes?

A. I give a proxy to the management of Mission.

Q. Under instructions of Consolidated?

A. No instructions at all. I have done it on my own initiative the last two times.

Q. Now the largest stockholder in Parcomis is Trojan Oil and Gas Company and you say the Southwestern Development Company did hold all the stock of Parcomis at the time these oil rights were transferred and that stock subsequently was distributed to stockholders of Southwestern Development Company?

A. There are two or three questions in one there.

(The record referred to was read by the reporter, as set forth above.)

The Witness: The Consolidated Oil Corporation is the largest stockholder in the Parcomis Oil and Gas Company.

By Mr. March:

Q. Now, yes.

A. It now is, yes.

Q. And formerly was Southwestern Development; is that right?

A. Well—

Q. Or was it Producers and Refiners Corporation?

A. Let me give you the continuity. Originally all the issued and outstanding capital stock of Parcomis was owned and held by Southwestern. It distributed stock dividend after which 51 per cent of Parcomis was owned by P&R and the minority interest was owned chiefly by Mission or Trojan. I am not so sure which, just which at that time, but it soon became Trojan. The Parcomis stock was held by P&R but was sold by the receivers to Consolidated and at the same time Southwestern stock was sold. Does that answer the question?

Q. Yes. Now the largest stockholder of Parcomis is Consolidated Oil Corporation?

A. Right.

Q. Now what influence did Standard Oil have over the control of Canadian River Gas Company along about 1928 when all of this—I say along about in 1927 when the original contract was entered into by the parties which provided for the organization of Canadian River—cut that. That's getting the cart before the horse.

Subsequent to the organization of Canadian River Gas Company, what influence did Standard Oil Company have over the control of Canadian River Gas Company?

A. None, as such.

Q. What do you mean by "as such"?

A. Perhaps it is superfluous. I was trying to anticipate what you were thinking about. I'll go ahead and answer on that basis. Colorado Interstate was in a position to exercise some influence over the business and affairs of Canadian River by reason of its contractual relationship. The Standard Oil Company of New Jersey owned 42½ per cent of the capital stock of Colorado Interstate.

Q. Didn't they own any stock in Canadian River?

A. They own no stock in Canadian River.

Q. What is this contractual influence they had over them, in the control of the Canadian River Gas Company?

A. Well, under the gas sales contract, primarily, between Canadian River and Colorado Interstate.

Q. What did that provide in regard to this influence, in the control of Canadian River by Standard Oil (N. J.) or Standard Oil of New Jersey?

A. I have said that Standard Oil of New Jersey had no control over Canadian River.

Q. What about Standard Oil (N. J.)? What about Standard Oil of New Jersey?

A. No Standard company had any control of Canadian River.

Q. Or had any influence in the control thereof?

A. That's right.

Q. Do you know that to be a fact?

A. I will testify to it as a fact.

Q. Well, now, you are familiar with this contract—this agreement of March 10, 1930, agreement among participants in the Texas-Chicago Pipeline project, are you not?

A. Generally familiar with it, yes.

Q. I want you to explain to me—it says down here—I am reading here from this contract. It happens to be in Volume 62 of Federal Trade Commission report, under Docket No. 92, Senate Session dated February 16th, 1934. Pages 440. I'll read a portion of that contract, that agreement:

"Standard will furnish or cause to be furnished and the project will purchase twenty-five per cent of the gas for said project from the acreage of Canadian River Gas Company, a Delaware corporation."

Now how could Standard guarantee that Canadian River would turn loose with twenty-five per cent of the requirement of Texoma?

A. They couldn't.

Q. How come they wrote it in there?

A. Well, if you go a little further, they corrected it to the extent that it showed the contracts—the contracts show very clearly that it had no obligation to do or cause that to be done, except that it could make arrangements with Southwestern which it subsequently did.

Q. It wouldn't have much trouble making arrangements with Southwestern in view of the fact that it held considerable stock in Southwestern.

A. It held no stock in it.

Q. How could it make the arrangements, then?

A. It could make the arrangements by convincing Southwestern that it was a good thing for both of them to do.

Q. However, Rockefeller had considerable interests in Consolidated Oil Corporation which did—

A. The Consolidated Oil Corporation did not own any interests whatsoever in Southwestern at that time.

Q. The Producers and Refiners Corporation held that interest?

A. That's right, in 1932.

Q. The Producers and Refiners did have an interest in it?

A. Along with many thousands of other stockholders.

Q. A very substantial interest?

A. Yes, that's right, I think it was.

Q. So you would say that they couldn't cause—well, I won't ask you that question.

A. Not without the consent of Southwestern, and I don't think they intended anything else, and I think it is made clear by the subsequent document.

Q. Where are the subsequent documents?

A. Well, I don't have those.

Q. Will you produce them for the record here so we won't have any misunderstanding in regard to this proposition?

A. May I ask some questions off the record from my boys to find out if they have got them or not?

The Trial Examiner: Let's keep it on the record.

Mr. March: We can clear that up during the recess.

The Trial Examiner: You will take it up at the next recess?

Mr. March: Yes.

The Trial Examiner: Very well.

By Mr. March:

Q. Let's see here now, who was this Minel E. Young whom you negotiated with for the sale of this gas of Amarillo Oil?

A. He was a man who had been active in natural gas business up in Wyoming prior to the time mentioned in my statement.

Q. He had no connection with this other company, is that right?

A. None whatsoever.

Q. Who was financing him?

A. I don't know.

Q. How come the deal fell through?

A. I think it was the lack of financing. That's hearsay. I don't know. It fell through.

Q. Now, when you wanted to sell this—market this gas of Amarillo Oil Company, and say you went to Standard interests and tried to sell them on the proposition; is that right?

A. Yes, sir, we approached them.

Q. Whom did you approach?

A. I don't want to give the impression that I did the approaching. I didn't.

Q. Mr. Fitzpatrick?

A. Mr. Fitzpatrick first took it up with Mr. Walter Teagle who at that time was President of the Standard Oil of New Jersey.

Q. How about Christy Payne?

A. He didn't come into it until, as I understand it, until Mr. Teagle suggested to him that he investigate the feasibility of the project that we were talking about.

Q. In other words, he was really working under Mr. Teagle's direction, to your understanding?

A. I think so, and the Chairman of the Board.

Q. Who are these Denver people, this City group here interested in securing natural gas here, you speak of here? this Denver group that was interested in getting natural gas?

A. That statement is based upon the reports in the newspapers at that time and the activity of Mr. Young with the City officials, none of which we conducted.

Q. The City officials contacted you? You didn't contact them?

A. I misunderstood you. No, not in—

Q. What did they do?

A. They didn't contact us at that time, in 1926.

Q. Was the—was it the Public Service Company of Colorado that really prompted your interest in this development?

A. I think it was the general situation in Denver that attracted us more particularly the ordinance that was adopted providing for furnishing natural gas in Denver, if found feasible by the City Council.

Q. This testimony is pure hearsay on Page 3 of your statement:

“Moreover, Southwestern had learned from various sources that the City of Denver was actively interested in making natural gas available as an additional fuel supply for its residents and industries.”

A. I think that statement is hearsay except, in that it is based upon newspaper articles and what Mr. Young told us at the time he asked for the option.

Q. What were you doing during this period? Were you right on the ground floor, right in the field, or personally in on these negotiations?

A. No, I wasn't a major general, or I wouldn't say that I was even a captain or lieutenant. I was a young lawyer living here in Denver at that time and familiar, and watching these things as best I could that were going on, and had some connection with the business of the companies that employed me.

Q. You were actually employed in the legal department of one of them, weren't you?

A. Yes, but I didn't want to leave any impression that I was leading the band in this proceeding. That wasn't so. I didn't occupy any such importance.

Q. Are you a general or a private now?

A. I am still a private and I hope to continue so.

Q. I hope I can find out who your general is. What did you have to do with this King report? What do you know about it?

A. I know about it. I have seen it. I was here at the time it was filed. I understand it is going to be offered in evidence here.

Q. You didn't have anything to do with Mr. King's report and just read it after it was written, isn't that right?

A. That's right. Certainly I had nothing to do with it.

Q. I believe Mr. King was employed by the City of Denver, wasn't he?

A. He was.

Q. He wasn't an employe of your company?

A. He was not.

Q. Did you also give him any assistance or did the company give him any assistance?

A. Gave him such information and data as he requested when he came to the field to investigate the reserves.

Q. He came down into the field and you made available the basic data upon which he made his estimate of reserves, is that right?

A. I don't want—I wouldn't say that. I would say that the company gave him such assistance as he requested. Now whether he used that as a basis for his report, I wouldn't know.

Q. You all were anxious that he return a favorable report, weren't you?

A. We didn't want anything but a fair report.

Q. Favorable report, I said.

A. Why certainly, if he could conscientiously give us a favorable report it would delight us.

Q. Was your project entirely dependent upon the estimated reserves made by Mr. King?

A. Well, of course what the project depended upon and what were the essential features of it was to be determined by the City of Denver. We didn't have anything to do with that. It was up to them.

Q. Yes, I understand, but you didn't start that project without knowing that you had sufficient reserves to furnish the project, did you? You couldn't sell Standard nor couldn't sell anybody on it—

A. I misunderstood your question. Would you mind stating it again?

Q. Yes, the question as I recall was, did you rely upon this estimate of reserves of Mr. King in your determining as to the feasibility of this project, the estimate of reserves of Mr. King?

A. No, we had formed our own estimate of reserves prior to the time of the King report.

Q. Who made those estimates?

A. I don't recall who made them at the moment. We

had access to various reports that had been made on the reserves in the field.

Q. What is just one of those reports?

A. I can't answer that offhand. I would have to check our files to see.

Q. Will you check up for me?

A. Yes.

Q. Do you recall—

A. I don't think that—to be a little more explicit—I don't think the Canadian River or Amarillo Oil went out and employed anyone at that particular time to make a report on its gas reserves. I think it had general information that was available on reserves.

Q. Well, of course you had to take something up to Standard's office with you to show that you did have reserves?

A. I think they made their own investigation of reserves.

Q. They made an investigation of reserves?

A. I think they did.

Q. Who made that estimate?

A. I don't know.

Q. You didn't know how much reserves you had down there?

A. Why, we had an opinion of what reserves we had, yes.

Q. Whom did you rely upon for your estimate of reserves in 1928 in this project, even before the King report?

A. We better leave it where we had it before, if we had specific reports at that time. I'll look up and see and reply to you.

Q. Such information as you had, though, was made available in a cooperative spirit to Mr. King?

A. Such information as Mr. King requested of us, I am sure that he got.

Q. What was the estimate of reserves that you recall? How much reserves did they have down there when this project started? How much did they figure on?

A. I don't recall the figure.

Q. The contracts say twenty years. The contracts are only made for twenty years, aren't they?

A. That's right.

Q. Why was that?

A. Well, one very good reason is the Public Service Company of Colorado only had a franchise for twenty years.

Q. Well, you had other customers besides them, didn't you?

A. That was the principal contract at that time without which the project, it was rather dubious as to whether they would want to carry it on or not.

Q. Well, the Colorado Fuel and Iron Corporation was just as important a factor as the Public Service Company of Colorado, wasn't it?

A. Well, they both, I would say to you, were very indispensable.

Q. I won't argue that question with you.

What did you know about the contracts? Did you have anything to do with the negotiation of the contract with the Colorado Fuel and Iron Corporation?

A. I did not.

Q. Did you ever meet Mr. King and talk to him and know him?

A. I think I met him at the time he was here in Denver but I am sure he wouldn't count me among his acquaintances.

Q. Do you know where he is now?

A. No, sir, I do not.

Q. I notice here in your testimony expressed on Page 7, beginning on Page 7, that you speak rather prolifically concerning—you describe the field rather prolifically down there in the Panhandle field. Is that first-hand information or second-hand information?

A. What page is that on, please?

Q. Beginning on Page 7.

A. That had to do with—my Page 7 has to do with the issue of bonds, Mr. March.

Q. I beg your pardon. It is over on Page—it is on Page 12 and 13, I believe.

A. Well, if you mean by that, Mr. March, did I survey the land and count the number of wells and so forth, I did not, of course.

Q. Whom did you get your information from?

A. The information comes from our own organization.

Q. Who in your organization?

A. It is the character of information that we need all the time.

Q. Who furnishes that information in your organization?

A. A number of different people furnish it, depending upon what I want.

Q. Who does?

A. Different people furnish it, depending on what I want.

Q. Say what you want is this.

A. Say what I want is this? Well, as to the number of wells, I would ask Mr. Watson, our Mr. Watson, who is engineer for the Canadian River Gas Company.

Q. What about—

A. And also as to the open flow.

Q. How about the fifty oil pools?

A. I would get that from him, too.

Q. What about the sweet and sour gas?

A. That would be all general information that would come from Mr. Watson's department. Let me say that this particular information—the basis of it was gathered in connection with the prosecution of some suits the Canadian River Gas Company had involving conservation statutes. For instance, I think the number of wells, the open flow as of this date is considerably in excess of what I have enumerated.

Q. Then your data is not up to date?

A. The Colorado Interstate—

Q. You are not stating the present situation here?

A. No. The number of wells is now greater and the open flow would be greater.

Q. When did this situation exist?

A. These are only round approximate figures. I would say they existed between 1938 or thereabouts—1938 and 1939.

Q. You don't know?

A. Yes, I do know.

Q. Now, what about this sentence here: "Estimates of original gas reserves in this field have ranged from fifteen trillion cubic feet to something in the neighborhood of

twenty-five trillion cubic feet, of which approximately two-thirds was sweet gas"? What estimates are you talking about there?

A. All the estimates that I related about and have seen from time to time since I ever had any knowledge of the field.

Q. Have you been reading about them? When did you read about them?

A. Well, at various times we have read about them over the years.

Q. What reports did you read?

A. Well, I think the more recent reports I have read bearing upon this subject would be the testimony in the rate proceeding of the Natural Gas Pipeline Company, their testimony there on the subject.

Q. What did you have to do with employing the geologists who testified there?

A. I had nothing to do with the employment of the geologists either for the Texoma or the Natural Gas Pipeline Company.

Q. You were interested in that because you were a director of the Texoma line and the Natural Gas Pipeline? You felt a responsibility there?

A. A responsibility for the employment of the geologists?

Q. I mean for the case. You were on the Board of Directors and the case was involving your company?

A. My responsibility of—my responsibility as a director of the Natural Gas Pipeline Company in this rate case was to see that competent counsel was employed to prepare and carry out our case for us, which we endeavored to carry out.

Q. Where did you get your figure of fifteen trillion?

A. That testimony before the Federal Power Commission is a very round figure. As I recall it the original reserve in the field testified to by Mr. Hughes and Mr. Thompson and Mr. Peterson was approximately that.

Q. Is that the only estimate of fifteen trillion that you know anything about, the Texas Panhandle field?

A. No. I have seen other estimates around the same figure. There is no particular importance here except to

show a range—I am not attempting, Mr. March, to put any geological testimony in here.

Q. You don't feel qualified to do that?

A. I certainly do not.

Q. In other words, you want a definite understanding that you are just making a general statement here?

A. Exactly. I wouldn't object if you tried to strike it out. I wasn't—if you think it would go too far I would have no objection to striking it out.

Q. With that understanding there is nothing misleading. In other words, this fifteen and twenty-five trillion is pure hearsay?

A. Exactly, and I am not in a position to say either one or both are anywhere near correct.

Q. There may be forty trillion there for all you know?

A. It may be so.

Q. You gave some testimony before the Federal Trade Commission—

The Trial Examiner: Mr. March, before you finish that question I would like to interrupt you.

We will take a five-minute recess at this time.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

The Trial Examiner: The hearing will be in order.

By Mr. March:

Q. Mr. Spencer, I have before me a transcript of a proceeding before the Securities and Exchange Commission, Docket No. 70-146, dated October 11, 1940. On Page 17 this question was asked and I will read your answer:

“Q. Do you know whether or not your production and engineering officials have indicated whether they believe there are unexplored reserves that might be available for the system if it should be required, that is, unexplored or unused reserves?”

Your answer:

“A. Well, we know that new gas fields are being constantly opened up and old gas fields are being constantly extended. We also know that there is a substantial quan-

tity of natural gas reasonably adjacent to our pipeline which has no present market. Does that answer the question?"

Do you recall making that statement?

A. Yes, sir.

Q. What source of supply did you have reference to when you said "a substantial quantity of natural gas reasonably adjacent to our pipeline which has no present market"?

A. The pipeline I was talking about in that testimony was the pipeline of the Natural Gas Pipeline Company and the Texoma line running from the Panhandle field to Chicago, and the fields along that line which I mentioned as having not been fully dedicated to any market were at Hugoton and I believe Otis and some other fields in Texas, smaller fields.

Q. Your geologists had told you there was a substantial supply of gas in the Hugoton field?

A. Yes. I don't know as my geologists had told me. I certainly have received that impression from reports. I have read that there is a substantial supply of gas at Hugoton.

Q. You are an executive of the company? You are largely an administrative executive?

A. What company?

Q. The Canadian River Gas Company and the Southwestern Company.

A. I would say that I am one of the chief administrative officers of Southwestern and Canadian River.

Q. You are not worried much about adequate reserves, are you?

A. (Pause.)

Q. What I mean is that you think you have an adequate reserve here, don't you?

A. We are worried about everything—perhaps too much. We are worried about adequate reserves and the future of our markets and all of those things.

Q. You apparently think there is not much need to worry about the gas running out down there because you say here that new fields are being opened up all the time and a great deal adjacent which has, you indicate, a very very large supply of gas?

A. We are not concerned about the immediate exhaustion of the gas reserves available to either the Natural Gas Pipeline Company or the Texoma.

Q. You have an adequate supply for a good many years to come?

A. I would say so.

Q. Do you know about how many years to come?

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Mr. Dougherty: What company are you talking about?

Mr. March: The Canadian River Gas Company.

Mr. Dougherty: Is that the company you were speaking of, Mr. Spencer.

Mr. March: The Colorado Interstate.

The Witness: The answer I gave, as I interpret the question, was that it was applicable to the Canadian River.

By Mr March:

Q. Can you answer that?

A. I can't give any specific number of years. Our geological data on the field is in the process of being brought down to date right at the time. It has not been completed or any final conclusion reached, so to ask me to fix a specific year in which our gas reserve would be exhausted, or a specific span of years over which we would have gas reserves, I would be unable to answer that at the moment. There are a lot of other things that must be taken into consideration, as to the pressure that you need to economically continue operations and other things that I am really not qualified to answer.

Q. How long have your geologists been working on the estimate of reserves?

A. I think our geologists have been working on the question of reserves in this field as long as I can remember.

Q. Don't they ever get to an answer?

A. They got to an answer—

Q. What was the answer at one time they reported to the management of the company?

A. I am speaking generally. I don't know the Canadian River has ever employed anyone to give specific statements or estimates of gas reserves except in the instant case. It may have but I don't recall any other instance.

Q. There have been people working on this estimate of reserves on this Southwestern Development?

A. We haven't, no. I was speaking of geologists constantly engaged in the study of these fields.

Q. In other words, you have been working along for a good many years and you don't know how much gas you have.

A. We feel we have sufficient gas reserve that there isn't a prospect of our being exhausted in the immediate future. That is certain.

Q. What do you mean by "immediate future"?

A. You are getting me to fix a day.

Q. No, approximately. You are not worried about that? You feel you have sufficient reserves?

A. We are not worried about reserves. As I said in the beginning, we worry about other things more than the extent of our gas reserves—for instance, the continuation of our existing contract.

Q. Your existing contract?

A. With the Colorado Interstate.

Q. When is it up?

A. 1947.

Q. So you are thinking more about getting the contract renewed than worrying about having enough gas to supply the Public Service Company?

A. I certainly am. I will say we have an ample gas reserve to supply the market during that part of that contract and some period thereafter. I don't know how long.

Q. Why are you worried about getting this contract renewed?

A. Because we would like to continue our market if possible.

Q. There is no reason why? No one else is serving them with natural gas?

A. No, not at the moment.

Q. There is no reason it wouldn't be renewed, is there?

A. There are a lot of contingencies to the renewal of

this contract. The Public Service Company of Colorado is in no position to renew the contract with us, even if so disposed, until they get some new franchises from the City of Denver.

Q. Would you help them get them like you did before?

A. We would help them in every proper way if it was a proper way.

Q. You say, "if it was a proper way"?

A. I mean some—I meant to emphasize—

Q. If it gets the results?

A. No, no, not that. I mean in every proper way and just that.

Q. You state here on Page 13 of your written statement or your testimony, speaking of the Canadian River as I understand it, "It does not occupy a monopolistic or exclusive position in any one of these fields, because of the facts hereinafter stated." Then you state some facts. How do you know it doesn't occupy a monopolistic position? Can you amplify it in any manner here?

A. Because it does not hold any franchises, governmental grants or anything else that gives it an exclusive position to produce gas, market gas, transport gas, or sell gas.

Q. You wouldn't accept anything like that from the Government, would you, if you could get out of it?

A. I would be delighted to accept something like that if I have to accept regulations under the Natural Gas Act.

Q. In other words, by "monopoly" you mean the exclusive position that they don't have a grant or a franchise from the State of Texas to exclusively take the gas from that field?

A. That is right. I didn't mean anything connected with anti-trust.

Q. You say down here at the bottom of the page that there are nine companies supplying domestic and industrial gas to Chicago, Minneapolis, Denver, Dallas, Des Moines—and so on. What are those nine companies?

A. I don't know as I can give them all. I will try. The Natural Gas Pipeline Company of America, the Northern Natural Gas Company, the Colorado Interstate Gas Company, the Lone Star Gas Company, the Panhandle

Eastern Pipeline Company, the Consolidated Gas Company—there is the Cities Service Company that is a pipeline company. I am not sure of the correct name. It supplies Kansas City I think and the territory contiguous thereto.

Q. Do you know how many of these are jointly interested in the Natural Gas properties in the Texas Panhandle Field?

A. Will you please read the question?

(The question referred to was read by the reporter, as set forth above.)

By Mr March:

Q. For example, there are quite a few interested in the Natural Gas Pipeline Company?

A. That is correct.

Q. There are several interested in the Canadian River and Colorado Interstate?

A. Well the same ones interested in the Canadian River and Colorado Interstate are also interested in the Natural Gas Pipeline Company.

Q. The same outfit, the same group?

A. No, they form a part of it.

Q. When you get up to the stockholders they are substantially the same stockholders?

A. That is not correct. There are several stockholders in the Natural Gas Pipeline Company of America that have no interest in the Colorado Interstate Gas Company or Canadian River Gas Company or the Southwestern.

Q. But there are some that do?

A. There are the three I mentioned.

Q. Yes. Which one?

A. Maybe I didn't mention them. They are the Standard of New Jersey, Southwestern and—well, the Cities Service, which is the parent company of the Public Service Company of Colorado; they are stockholders in Colorado Interstate, and are also stockholders in the Natural Gas Pipeline Company.

Q. One more question about this Texoma and Natural Gas Pipeline Company which bears on this field: Where do you intend to get your gas to serve Milwaukee?

A. Well—

Q. I will put it this way: Will that mean an increase upon the demands upon Canadian River?

A. We hope so.

Q. You hope so?

A. Yes.

Q. In other words, it is your hope that a larger percent of the Canadian River Gas will be used by the Natural Gas Pipeline for this Milwaukee service?

A. That is right.

Q. Do you contemplate tapping onto the Hugoton field?

A. I am not certain what you mean.

Q. I mean when I say "you" the Natural Gas Pipeline Company for this Milwaukee service.

A. No decision has been made by the Board of Directors at this time, as far as I know and have inquired, to acquire additional reserves any place.

Q. How are you going to shoot more gas through that line to Chicago? I thought it was running to capacity now.

A. Well, I am not an engineer. The line does have a capacity—additional capacity. It depends upon how much compression you want to put on it and there is a possibility of looping part of it. All of those things are now under study by the Natural Gas Pipeline Company to determine what it should do, as to what extent it should provide additional capacity.

Q. I believe in your Colorado Interstate line it is not operating at capacity, is it?

A. Sometimes it is operating to capacity. Most of the time I guess it is not. When I say "guess" I haven't the figures in front of me.

Q. Are you trying to sell more gas?

A. What?

Q. Are you trying to sell more gas?

A. You are speaking now of the Denver line?

Q. Yes.

A. Oh, yes, we would be glad to sell more gas if our customers would take it, our present customers—

Q. Just your present customers?

A. Yes.

Q. You wouldn't want to sell gas to anybody else?

A. We haven't any proposal before us to sell gas to anyone.

Q. Are you open for any proposal?

A. Are we open for any proposal?

Q. Yes.

A. I think we would be very foolish to say we were not open for a proposal. We would be glad to consider any proposal to sell more gas. Whether or not we would accept it would depend upon the facts and circumstances at that time.

Q. You contemplate an increase in your Denver business in the immediate future?

A. You are getting a little out of my line.

Q. You are not that man?

A. I am not the market expert. I am not the market statistician and I don't want to appear to cover too much territory.

Q. I will apologize if I am—

A. I am answering you as far as I can.

Q. I think you are. It is just because of this general testimony here and I just wanted to get the attitude—

A. I invited general cross examination by the character of the statement I put in and I will answer the questions the best I can.

Q. I think you have.

A. Thank you.

Q. I can't quite understand why you are so interested in keeping—I mean in not purchasing gas from so many producers in the Texas Panhandle field. In other words, you fought legislation which required you to purchase this gas from independent producers? You don't want to have anything to do with it?

A. Well, to tell that whole story would take quite a lot of time but I say simply this: There are quite a number of reasons as far as I am concerned. The Canadian River Gas Company went into the field and paid five million dollars—

Q. They made five million dollars?

A. Paid five million dollars.

Q. They only made four million dollars?

A. Not that.

Q. It was the Amarillo Oil Company that made that?

A. Please read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. March: Please read the question before that, Mr. Reporter.

(The record referred to was read by the reporter, as set forth above.)

The Trial Examiner: You didn't answer Mr. March's first question completely.

Mr. March: Go ahead and complete your original answer.

The Witness: Let me start again.

The Canadian—

By Mr March:

Q. I didn't quite understand your position there, why you were so interested in not purchasing that gas.

A. Let me say this: The Canadian River Gas Company paid five million dollars for gas rights and gas leases of the Amarillo Oil Company. It drilled a lot of wells itself and built gathering lines for those wells and built its own pipe line and so forth. It went down there with the idea of having a fixed permanent reserve to take care of their Denver market. They went down there under a policy of not being dependent upon anybody for its gas supply; it would have its own gas supply and it would furnish it over the years to the Denver market. Now, having bought and paid for its reserve and having drilled its wells for this purpose, it seemed to be unjust and unfair to require Canadian River to pay for somebody else's gas reserve, gas wells, and gathering lines. That was one of the main economic reasons.

Q. What if you could get that gas cheaper than you could sell it or sell it to the Colorado Interstate?

A. Cheaper gas today—any reliance upon cheap gas today may become very expensive tomorrow when you depend upon somebody else. We think the cheapest and most economical way to run this business is to have our own gas reserve and our own gas wells and not be dependent upon somebody else.

Q. If you could get a special price for independent gas down there you could just let your gas stand aside for a little while and take up the independent load?

A. The trouble is, gas doesn't stand aside. It isn't static. If you think you are leaving your gas there and taking somebody else's, probably your gas is going out the back window.

Q. If you are taking out yours you are probably draining that from the independent man's property. It is better to do that than the other way?

The Trial Examiner: Mr. March—

The Witness: Wait a minute. I think the record will show that the drainage has been away from the Canadian River Gas Company's reserve and not to them.

By Mr. March:

Q. You don't know that?

A. Yes. That is what all the figures I have seen—

Q. What figures? It is very important and I want to know what figures?

A. All the reports I have seen.

Q. What reports?

A. (Pause).

Q. I didn't think you had many reports of the reserve of this field.

A. I haven't many reports.

Q. What reports? What are you basing that on? It is important in this case.

A. You will probably get it at the proper time but don't try to get it through me.

Q. I don't want to get the statement through you if you don't know.

A. I beg your pardon. I only put it in there because you said I want to correct the impression I felt we were.

Q. In other words, you don't know actually who is draining who?

A. No, I am not an expert on that.

Q. You don't know, do you?

A. No, I wouldn't say I am a witness for that at all.

Q. You don't know, do you?

A. (Pause).

Q. You don't know who is draining who down there, whether you are draining somebody else—you don't actually know yourself? You just know what people tell you?

A. I don't actually know myself.

Mr. March: That is all.

Mr. Lange: I have a few questions that I want to ask Mr. Spencer.

The Trial Examiner: Proceed.

Cross Examination (Continued).

By Mr. Lange:

Q. Going back to the time this project for the bringing of gas to Denver was first thought of, wasn't it first uncertain as to whether it would be one company transporting the gas of the entire district or two? When was it finally determined whether it should be one or two companies?

A. I think, Mr. Lange, it was always intended to have two. There was a possibility that they might want to have three and they later fixed it on two.

Q. Two?

A. Yes. I am speaking of the project as a whole.

Q. Yes. When they determined upon two, did they determine how far each company was to go?

A. I think that was determined in the agreement, just exactly how far each company was to go. I am speaking of the agreement of April 5, 1927.

Q. And at that time the Canadian River constructed its line from the Panhandle field to just beyond the State of Texas into New Mexico?

A. Clayton, New Mexico.

Q. Clayton, New Mexico?

A. Yes.

Q. And at that point connected up with the facilities, the transmission line of the Colorado Interstate?

A. Yes, sir.

Q. Which extended from Clayton, New Mexico, through New Mexico into Colorado and then on to Denver?

A. That is right.

Q. That was the way the project was finally built?

A. Yes, sir.

Q. And shortly after its completion the gas began its course through those facilities, first through the facilities of the Canadian River out of the Panhandle of Texas to Clayton, New Mexico?

A. That is right.

Q. The gas moved through that line and at that point delivery was made under the contract with Colorado Interstate and the gas then moved on through the facilities of the Colorado Interstate through New Mexico and into Colorado and to Denver?

A. That is right.

Q. And that has been the course of operation ever since that time?

A. That is right, it is a continuous flow through the pipeline facilities.

Q. Facilitated through compressor stations along the line?

A. That is right.

Q. At the time the project was first started artificial gas was being sold in Denver, was it not?

A. Yes, sir, it was being distributed here.

Q. Distributed here by the same company that now distributes it, the Public Service Company of Colorado?

A. Right.

Q. And was artificial gas also being distributed about that time in the City of Colorado Springs?

A. Yes, sir.

Q. And who was distributing it there?

A. I believe it was being distributed by a municipal gas plant; that is, a plant that was owned by the municipality itself. That is my understanding.

Q. And the results of being distributed in Pueblo?

A. Yes, sir.

Q. And shortly after the completion of these lines natural gas was then substituted for the artificial gas and distributed at those various points along the line?

A. Well, following the delivery under our several contracts for these cities, yes.

Q. And when the project was contemplated being built it was, of course, contemplated that this natural gas that

would be transported through those lines, would be substituted for the artificial gas for distribution at those various points?

A. Yes, sir.

Q. And the gas was so distributed and is still being distributed to domestic and commercial users in Denver, Pueblo, Colorado Springs and those other points?

A. That is right.

Q. And subsequently other delivery points were established for the sale and delivery of gas to the Colorado-Wyoming Gas Company?

A. Yes, sir.

Q. About how long after the Denver project had been completed was that begun?

A. The contract was dated about a year after, isn't it?

Q. It is fixed by contract?

A. I think it is within a year or so after the execution of the original contract?

Q. And sales were made from that time on and have continued? They are still being made as far as you know?

A. To Colorado-Wyoming?

Q. Yes.

A. Yes.

Q. And that gas is delivered by Colorado Interstate rights to what is known as the Denver gate by Colorado Interstate, isn't it?

A. Yes, I think—you are asking me a lot of things I am really not qualified to answer, but that is my understanding.

Q. In connection with your managerial work you do have occasion to inform yourself first-hand as to those matters, don't you?

A. I am not an officer of Colorado Interstate, I am a director. I am generally familiar with what you are talking about.

Q. You are interested in the ultimate destination?

A. That is right.

Q. And volume of gas in a general way?

A. That is right.

Q. And that gas after being sold by Colorado Interstate to Colorado-Wyoming is then transported by that company?

through a portion of Colorado and into Wyoming at Cheyenne?

A. So I understand.

Q. And those operations have been continually carried on since the time this contract was entered into between Colorado Interstate and Colorado-Wyoming?

A. As far as I know.

Q. As far as you know the deliveries have been continually made?

A. Yes.

Q. There is one other matter with reference to the acreage that I would like to get cleared up. On Page 7 of your statement you referred to the wells covering approximately 325,000 acres of land; that is, as of 1928. I noticed on Page 13 of the statement that the Canadian River now holds approximately 315,000 acres. There has been a reduction, hasn't there? Explain what has taken place. Has there been a reduction in the acreage?

A. Yes, sir.

Q. In what fashion?

A. They have been surrendered, there have been surrenders of acreage there to lessors subsequently.

Q. That is what accounts for that difference?

A. There have been acquisitions of acreage, Mr. Lange, and also dispositions of acreage since 1928, which leaves us with this net figure at the moment or approximately this net figure.

Q. Does Canadian River hold any acreage producing or capable of producing gas in any other area than the Panhandle of Texas?

A. Its gas interests are confined to the Texas Panhandle entirely.

Q. At the time this deposition was taken—referring to the Federal Trade Commission, you testified before the Federal Trade Commission on one or two occasions, didn't you?

A. If you are speaking about the Utilities investigation—

Q. Yes.

A. I appeared once as a witness, I believe. It was just once, I believe.

Q. Have you testified in any other cases involving either natural gas or oil?

A. I didn't consider that a case.

Q. Well, I will say any other case than this proceeding you are now testifying in or any proceedings.

A. Are you limiting this to the natural gas?

Q. And production of oil, either the production of gas or oil or any of the matters pertaining to it.

A. During the time that I was receiver for Producers and Refiners Corporation I testified several times before the various courts involved in the receivership proceeding.

Q. Where was the receivership pending at that time?

A. The primary action was pending in the United States District Court for the District of Wyoming at Cheyenne. There were four ancillary proceedings; three in the state of Oklahoma and one in the state of Kansas.

Q. What were the style and names of those?

A. I couldn't give you those offhand.

Q. Well, if you can supply that later—

A. All of them?

Q. Yes.

A. I would be glad to.

Q. From your testimony, as near as you can recall?

A. I can give you the title of those.

Q. Do you recall the courts?

A. I will include the court and style and caption of the case. I have appeared before the Securities and Exchange Commission in various matters.

Q. You might include that in your list, too.

A. A list of the applications and declarations and docket numbers and the dates will be sufficient?

Q. As nearly as you can, yes.

A. All right.

Mr. Lange: I think that is all for the present.

The Trial Examiner: Do you have some questions, Mr. Gibson?

Mr. Gibson: I don't believe I do at the present time.

The Trial Examiner: You haven't at the present time?

Mr. Gibson: No.

Mr. Keffer: We have some redirect examination, Mr. Examiner.

Mr. Dougherty: If I may be permitted to ask some questions here before redirect examination, I would be glad—

The Trial Examiner: I think you might, Mr. Dougherty.

Cross Examination (Continued).

By Mr. Dougherty:

Q. Mr. Spencer, a number of questions have been asked concerning a figure of five million dollars. Do you know if that figure was fixed, namely, the amount that the leases which went into this project from the Amarillo Oil Company was fixed in some document prior to the time when the Canadian River actually made the purchase?

A. A consideration of five million dollars to be paid and paid by Canadian River to Amarillo Oil Company for its gas rights and properties was fixed in the pre-organization agreement dated April 5, 1927 between Southwestern, Standard and Cities Service.

Q. I hand you Exhibit No. 1 which has been marked in evidence in this case, and I am referring you to Article 13 on Page 17. Do you find there the fixing of that price of five million dollars that we are discussing?

A. (Examining document) This article covers that subject.

Q. And who were the participants to that contract?

A. Southwestern Development Company, Cities Service Company, Standard Oil Company (New Jersey).

Q. Was Canadian River Gas Company a party to it?

A. Canadian River Gas Company was not in existence at that time. The agreement provided for the subsequent organization by Southwestern.

Q. When was Canadian River organized?

A. February 1928.

Q. And at the time when the transaction that you referred to, namely the meeting of the Board of the Canadian River and the adoption of the resolution authorizing the payment of five million dollars for the acreage, when that took place were there any negotiations between Canadian River and the Amarillo Oil Company concerning that?

A. None whatsoever. That was merely a part of the carrying out of the terms and conditions of the April 5, 1927 agreement.

Q. Have you any knowledge as to the parties that negotiated the price of five million dollars?

A. Yes.

Q. Who were they?

A. The price was negotiated primarily by Mr. Christy Payne of Standard and Mr. Moody and Fitzpatrick for Southwestern.

Q. Some reference has been made to twenty years as the period of contract *with* Canadian River has with Colorado Interstate Gas Company for the sale of gas. That contract is Exhibit No. 16 in this case. Do you know whether or not it provides for an option under which Colorado Interstate can purchase gas from Canadian River beyond that 20-year period?

A. It contains such an option.

Q. There was a question asked you by Mr. March in which he said, "did you want to sell more gas" and I think you said, "We would like to sell more." I would like to know what company you are speaking of or had in mind at the time when the personal pronoun was used. Was it the Canadian River or the Colorado Interstate?

A. I was speaking primarily of Canadian River and indirectly I hold the same feeling for Colorado Interstate.

Q. What I had in mind was that you still are cognizant of the provision under which that gas would have to be sold to Colorado Interstate, except by its consent?

A. Exactly.

Mr. Dougherty: That is all I have.

(Cross Examination (Continued))

By Mr. March:

Q. Were there ever any direct negotiations between the Amarillo Oil Company and the Canadian River Gas Company in regard to that five million dollar deal, the acquisition of the gas land, in which the Amarillo Oil Company paid only a little over a million dollars for it?

A. Substantially over a million dollars.

Q. Say two million dollars to be generous?

A. Yes, there were direct negotiations on that contract between the parties to the agreement of April 5, 1927, as I have testified—perhaps I misunderstood your question.

Q. I understand you have testified here that the original commitments were made providing for this five million dollar transaction before the organization of the Canadian River Gas Company?

A. Yes.

Q. The Southwestern, Cities Service and Standard?

A. That is right.

Q. What I am asking you is this: Were there ever any direct negotiations between the Amarillo Oil Company and the Canadian River Gas Company relative to that deal?

A. Well, there was a proposal submitted by one company and accepted by the other company. It went through the minutes of each company, however, that was merely a form of carrying on what had previously been agreed upon by the originators of the project.

Q. It was just a matter of routine?

A. I think, to answer you frankly, it was carrying out a previous agreement made and there was not what you call real bargaining at that time between the Amarillo Oil Company and the Canadian River Gas Company.

Q. The fact of the business is that Southwestern owned one hundred per cent of both companies?

A. That is right.

Q. And there wasn't any room for any negotiations between the companies?

A. Not because Southwestern owned one hundred per cent of each company but because the terms and conditions of the transaction had been agreed upon in the organization agreement.

Q. Amarillo Oil Company didn't agree to that?

A. Yes, they did.

Q. Whom did they agree with? They weren't a party to this tri-party agreement?

A. Let's put it this way: It agreed and consented in carrying out the agreement Southwestern made for them.

Q. There wasn't much question about the Amarillo Oil Company agreeing in view of the fact all of the voting stock was held by Southwestern?

A. I don't think the Board of Directors deliberated too long over the proposal. I think they accepted it promptly (laughter).

Q. There wasn't any question about Canadian River paying that much money for it, was there?

A. No, that is right. The five million dollars had been provided for them from the outside with which to pay for it.

Q. From where? From Christy Payne of Standard Oil?

A. Mr. Christy Payne didn't furnish it.

Q. But Standard Oil did?

A. Standard Oil didn't furnish it to Canadian River. Colorado State—Colorado Interstate furnished the money to Canadian River.

Q. Colorado Interstate furnished the money to Canadian River?

A. Yes.

Q. It was a kind of trickling down process?

A. Nobody had any money yet except the Standard and it was coming on up through.

Q. The cash register has rung plentiful since then?

A. Sir?

Q. The cash register has rung plenty since then?

A. Well, "plenty" is a relative term. It has been generous.

Mr. March: That is all.

Mr. Dougherty: May I continue with just a couple of questions, Mr. Examiner?

The Trial Examiner: I think so, Mr. Dougherty.

Cross Examination (Continued).

By Mr. Dougherty:

Q. As I understand it, Mr. Spencer, the Colorado Interstate sold its securities, substantially all of them originally to the Standard Oil Company, a New Jersey Corporation?

A. Read the question, please.

(The question referred to was read by the reporter, as set forth above.)

The Witness: It sold substantially all of its bonds to the Standard of New Jersey and it sold 42½ per cent of its common stock and a million dollars of its preferred stock to Standard.

By Mr. Dougherty:

Q. The securities you mentioned were the entire source of cash that came into Colorado Interstate?

A. I think it was a source of all cash that came into the entire project.

Q. So that the cash started from Standard Oil Company then to the Colorado Interstate and then to Canadian River?

A. That is right from a cash standpoint. I don't want to overlook the words "substantial contribution" in gas reserves on the other end.

Q. So Southwestern Development Company was not taking five million dollars of its own funds and paying it to its own subsidiary?

A. It got five million dollars of outside money.

Q. Do you recall at the time prior to the organization of this project that use was being made of any of the leases and wells that the Amarillo Oil Company owned in the Panhandle field?

A. The only use being made of the lease and wells at that time was to supply the market requirements of the City of Amarillo and vicinity.

Q. How many wells, if you recall, were required to supply that city's gas requirements?

A. Well, they had one well that was capable of doing it. However, that would not be a very good practice. I think they had—I would say they had around nineteen or twenty wells in 1926. Not more than half would be connected up to the pipeline, however—I am trying to answer out of my head. I may be incorrect.

Q. At any rate, would it be correct to say that only a small part of the total gas reserves were being utilized to supply the markets that were then available?

A. That would be quite correct.

Mr. Dougherty: That is all.

The Trial Examiner: I understand you have some re-direct examination?

Mr. Keffer: I have a question of two, Mr. Examiner.

The Trial Examiner: Proceed.

Redirect Examination.

By Mr. Keffer:

Q. Again with reference to this transaction whereby Amarillo Oil Company conveyed its leases to Canadian River for a consideration of five million dollars. At the time that was made, Standard Oil Company had absolutely no interest in the Southwestern or now, as far as that is concerned?

A. That is correct.

Q. The Southwestern sitting on one side of the table making that deal had every incentive to get just as much as they could for that acreage, did they not?

A. Yes, they tried to get more than five million dollars.

Q. And likewise the Standard on the other side of the table were not interested in Southwestern, and furnishing all the money had every incentive to bear down as far as they could on the price is that not correct?

A. They tried to pay less than five million dollars.

(Vol. I, p. 125-154.)

Q. Now, Mr. Lange asked you a while ago, Mr. Spencer, with respect to artificial gas that was being sold and distributed in Denver, Colorado Springs and Pueblo, and you answered that you understood it was. What is the primary source of artificial gas, do you know?

A. Again I am not an expert. I would say the principal ingredient from which artificial gas is derived is coal.

Q. The artificial gas that was distributed in these various towns was generated largely through coal mined in this area?

A. The processing of coal.

Q. Yes?

A. Yes.

Q. That gas you stated had been replaced by natural gas. Is there any character of regulation with respect to the

mining, or was there at that time with respect to the mining, transportation and sale of coal to these gas companies for making artificial gas which was distributed in their systems?

A. None that I know of.

Q. In other words, the natural gas which Colorado Interstate has brought into these towns has simply replaced the coal which formed the basis of the artificial gas, is that not correct?

A. I think it would be more correct—substituted for the coal and artificial gas and everything that went into it.

Q. Right in that connection I am not sure how the record appears on it but it occurred to me that just a little explanation here might be made. That is that the Colorado Interstate in these various towns of Colorado Springs, Pueblo, Denver, and ~~others~~, merely sells gas at the city gate, is that not true?

A. That is correct.

Q. In other words, the Colorado Interstate is not engaged in distribution in any sense in those respective towns?

A. That is right.

Mr. Keffer: I think that is all.

Mr. March: I have some further questions.

The Trial Examiner: Proceed.

Recross Examination.

By Mr. March:

Q. You wouldn't want to say, Mr. Spencer, in view of your previous testimony here, that Standard Oil or persons owning substantial stock in Standard Oil had no interest directly or indirectly in Southwestern Development Company at the time this agreement between these three parties was consummated relative to this five million dollars?

A. Well, if you mean that stock ownership and affiliations, no matter how far removed from the situation, then I would say I could not be positive that was not so any more than I could be positive you weren't interested in Southwestern in the same manner, or anyone else.

Q. It is not that definite because you have already testified, as I understand, that you knew that John D. Rockefeller of the John D. Rockefeller interests had an investment in the Producers and Refiners Corporation—I mean the

Prairie Oil and Gas Company—which in turn had control of the Producers and Refiners, which in turn had 51 per cent of the Southwestern Development Company.

A. That is all right except at the base. I don't believe I testified that I knew. I believe I said "I believe." I didn't ever examine the stock or have any definite knowledge about the stock.

Q. Now Standard Oil gives, as I understand—or loans, as I understand, whichever it may be, or purchased bonds of Colorado Interstate Gas Company. They advanced this five million dollars to the Canadian River Gas Company and they purchased bonds; is that it? What do they get? What security do they get? Is it an open loan or what is it?

A. Well, I find it a little difficult in finding what you mean, who you mean by "they."

Q. I am talking about this five million dollar deal. I want to know just how the money was advanced and what evidence of indebtedness was gotten by all parties. Standard Oil didn't give Colorado Interstate five million dollars, did they?

A. Oh, no, I never found it to be philanthropic to that extent.

Well, let me see if I can follow it through. See if this answers it: The Standard Oil of New Jersey bought bonds from Colorado Interstate, The Colorado Interstate took that money and bought bonds of Canadian River and so that the five million dollars started with Standard would ultimately be in the treasury of Canadian River and that five million dollars was paid to Amarillo oil for its leases and gas wells.

Q. And where is Canadian River going to get the money to pay off this five million dollars?

A. The five million dollars?

Q. I mean pay off these bonds—pardon me.

A. The bonds?

Q. Yes.

A. Amortization of the bonds was included as a part of the cost of gas.

Q. And which is a part of the rate base to so-called cost rate base to Colorado Interstate?

A. And to Amarillo Oil Company.

Q. Yes. And then, of course, and in the final analysis the Denver rate payer is going to have a great deal to do with

the repaying of this five million dollars, their proportionate share?

A. Indirectly they will pay a proportionate part of the five million dollars through the amortization of the bonds; that's right.

Mr. March: That's all.

Recross Examination (Continued).

By Mr. Dougherty:

Q. Mr. Spencer, is the gas underlying those leases for which the five million dollars was paid; is that the gas that goes through pipelines and for which the gas consumers pay their money?

A. That's the same gas.

(Vol. 1, pp. 154-158.)

Q. Will you please state just the additional matters which he inquired about and concerning which you promised to secure additional information for him?

A. According to my notes Mr. March asked me to supply him with the title, court, caption and so forth of the receivership actions involving Producers and Refiners Corporation in which I was receiver. I have a copy of such information.

Q. Will you hand that to Mr. March?

Mr. March: Will you mark that for identification so we can have it in the record here?

Mr. Keffer: I have no objection.

The Trial Examiner: It will be marked for identification then as Exhibit 37.

(Exhibit 37, Witness Spencer, marked for identification.)

Mr. Keffer: We offer in evidence Exhibit 37 which is a statement of the actions pending in the receivership of the Producers and Refiners Corporation.

The Trial Examiner: No objection?

Mr. March: No objection.

The Trial Examiner: Exhibit 37 will be received.

(Exhibit 37, Witness Spencer, received in evidence.)

By Mr. Keffer:

Q. Were there any other requests made, Mr. Spencer?

A. Mr. March also asked me to give him a list of proceedings before the Securities and Exchange Commission in which I had appeared as a witness for Southwestern Development Company or its subsidiaries. I shall be unable to furnish that list until I return to my office but I shall do it at that time.

Q. But you will at that time assemble that information?

A. Yes, sir.

Q. Were there any other matters?

A. In answer to some questions regarding the organization agreement for the Chicago project which is now operated by Natural Gas Pipeline Company of America I testified that there was an agreement supplementing the original agreement which qualified or modified the Standard of New Jersey participation therein, and Mr. March asked me to advise him or to obtain a copy of such agreement and I have done that.

Q. You have secured a copy of that?

A. I have secured a copy of the agreement that I had in mind.

Q. I hand you, Mr. Spencer, Exhibit 38 and I will ask you if that is a photostatic copy of the agreement to which you have just referred, or the letter to which you have just referred?

A. It is.

Mr. Keffer: I will now offer in evidence Exhibit No. 38 which has just been identified by Mr. Spencer.

Mr. March: No objection.

The Trial Examiner: Exhibit 38 will be received.

(Exhibit 38, Witness Spencer, received in evidence.)

By Mr. Keffer:

Q. Are there any other matters, Mr. Spencer, about which inquiries have been made?

A. The last item I have in my notes is a request by Mr. March that I advise him concerning what geological information on the Texas Panhandle field Amarillo Oil Company had during the year 1926 to 1928. I requested our

office to make an examination of our files and I find that we have no specific reports that had been prepared for Amarillo Oil Company at that time. We did, however, have available bulletins of the American Association of Petroleum Geologists which contained geological information on the Texas Panhandle. I refer particularly to the bulletin of August 1926 and the bulletins which I believe are printed in a consolidated volume, I believe, for 1928, and that concludes the requests that I have in my notes.

Mr. Keffer: I take it, then, that the record might show that Mr. Spencer has complied with the additional requests for information that were made except as to the cases in which he has testified before the Securities and Exchange Commission and that request will be later supplied.

Mr. March: I have some questions.

Mr. Keffer: Well, may the record—

Mr. March: Yes, absolutely, as far as—

Mr. Keffer: That's all.

Cross Examination

By Mr. March:

Q. The geological journals you are speaking of, what were they again?

A. They are bulletins of the American Association of Petroleum Geologists.

Q. And the dates again?

A. Bulletin of August 1926 and the bulletins of 1928 which I think are printed in one volume.

Q. Did you read these during that period?

A. I don't recall that I did, Mr. March.

Q. Do you know whether or not your companies relied on the information contained therein?

A. I couldn't say that they did. I would say that it was a part of the information that they had available.

Q. Do you know that they actually saw the articles?

A. Yes, they are in their file.

Q. Whose files?

A. Amarillo Oil Company.

Q. Did you see them in the files?

A. No. You asked me to find out what they had and I

have tried to comply with that, but they have told me that they are in their files.

Q. They said they were? They didn't say whether they relied on them or not?

A. No.

Q. Do you know of anyone that did rely on them in connection with your companies, Southwestern Development Company?

A. I do not.

Q. You think that most of the geological advice—petroleum engineering advice, was oral advice to the executives then?

A. Well, undoubtedly they obtained oral advice. The reason I hesitate is because I'd like to answer your question in a different way which isn't actually responsive.

Q. Well, go ahead and answer it in your own way.

A. I don't think from my knowledge of it that they obtained much oral advice from geologists in those days. They had substantially over 300,000 acres of lands which appeared to them to be capable of producing large volumes of gas. They had twenty gas wells, one of which was capable of producing, as I recall, over 100,000,000 cubic feet per day. The twenty wells were scattered generally throughout this large block of land and if I have the feeling of that time it was that, "Why bother so much about the geologists? Here is plenty of gas," and it is very apparent on the record.

Q. You have the same feeling today, haven't you?

A. I still feel that we've got substantial quantities of gas. It should be evident to anyone.

Q. You just gave us the information from 1926 to 1928. I wonder if you have any reports which have been made to any of your companies as to the amount of reserves you have in your acreage, Canadian River acreage from 1928 to date?

A. I do not.

Q. Who's making that study?

A. We have studies that are in the course of preparation. We have employed Mr. James Thompson as our geologist of Amarillo. He has been engaged in this work.

Q. Mr. C. Don Hughes?

A. We have also employed Mr. Hughes.

Q. How about Mr. Peterson?

A. We haven't employed Mr. Petersen.

Q. So if we wanted to subpoena someone that would be familiar with the situation we would possibly want to subpoena Mr. Thompson and Mr. Hughes?

A. Well, I'll say this: If you wanted to subpoena someone in whom we had confidence regarding their geological ability you would be well advised in subpoenaing Mr. Thompson.

Q. What about—

A. Or Mr. Hughes.

Q. What about the geological department?

A. Sir?

Q. What about your geologists? Don't you have any geologists?

A. Mr. Thompson is, I believe, retained as a geologist, has been in recent years for Canadian River.

Q. By whom?

A. By Canadian River.

Q. He was likewise retained by Natural Gas Pipeline Company of America?

A. I think he was a geologist in that case.

Q. He acts as geologist pretty well for all the Standard Oil Company (N. J.) companies, doesn't he?

A. I think Mr. Thompson acts pretty well as geologist for everybody that needs information regarding the Texas Panhandle field. You understand the number of geologists who are familiar with and qualified to testify about the Texas Panhandle field is very much limited.

Q. You didn't think Mr. Peterson was a very good man?

A. Mr. Peterson isn't in the general practice of geology. He is an employee of Texoma Natural Gas Company.

Q. That is the reason you didn't secure him here?

A. We didn't consider employing Mr. Peterson. We may find it advisable to call him. We haven't concluded on that either.

Q. Now, so much for that. What I want to ask you next is about this supplemental agreement here that Standard Oil Company (N. J.) made—allegedly made in regard to the original contract, agreement I should say, for the building of this line to Denver.

Are there any other supplemental agreements to that contract?

A: I think there are. I don't know whether you call them supplemental. There were amendments or subsequent agreements pertaining to the original agreement, yes.

Mr. March: I wonder if you would produce those here because they have a very direct affect upon the main contract.

Mr. Dougherty: May I inquire so I can make a note of that?

Mr. March: All supplemental and amendatory agreements, oral, written, express or implied—whatever you want to call them—and in regard to the agreements of March 20, 1927—

The Witness: No, no.

Mr. Dougherty: That's what I was concerned about. The thing Mr. Spencer has in his mind hasn't anything to do with the Colorado Interstate Gas Company or that April 25th agreement. It has solely to do with the Natural Gas Pipeline Company of America matter.

Mr. March: Well, that's right. I'm sorry.

I want to make the other request now in regard to this—which did you understand I was asking you about?

The Witness: I thought you were asking—until you put in the date—I thought you were talking about the Chicago project, but then I was in doubt.

Mr. March: Let's get these other supplemental agreements in regard to the Chicago project, amendatory agreements, or oral agreements in regard to that situation.

The Witness: You had better make that request to Mr. Dougherty. I don't have the agreements available until after the time that Southwestern became interested in it.

Mr. Dougherty: I'll provide that.

Mr. March: Now I want to ask for those supplements.

Q. Are there any supplemental or amendatory agreements, oral or written, in regard to the 1927 contract, the tripartite agreement between Cities Service Company, Insull & Standard Oil Company (N. J.)?

A. None whatsoever so far as I know.

Mr. Dougherty: Maybe I didn't understand this. I thought you said Insull & Standard and still referring to the—

Mr. March: Southwestern instead of Insull—Southwestern and Standard?

Mr. Dougherty: Between City Service, Southwestern Development Company and Standard Oil Company?

The Witness: That's the way I understood your question. Did I answer it?

By Mr. March:

Q. You said none that you know of.

A. None whatsoever that I know of.

Q. Will you check and see?

A. I have done all the checking that I could. I have done my part of the checking and find none.

Q. One final question I want to ask you:

You said, I believe, you were an employee of the Consolidated Oil Corporation?

A. I am, yes.

Q. Do you know how much stock Sinclair owns in that company?

A. No, I don't.

Q. Do you know whether they own any at all or not?

A. I think they do but I do not know the amount.

Q. Very small amount?

A. I would rather not say whether it is small or whether it is medium or whether it is large. I don't know.

Q. You don't know anything about it. I believe you testified you didn't know who the stockholders of that company were except that you did know that Rockefellers had some interest.

A. Well, I couldn't testify about the Rockefellers any more than I could testify about anybody else.

Q. You want to change your testimony in that regard?

A. Not at all. I said I understood they were and I had seen statements in which they were listed as stockholders.

Q. Substantial stockholders?

A. Yes. I said also that I had not examined the stock records of the Consolidated Oil Corporation.

Q. I wonder if you would produce this Stockholders list of Consolidated Oil Corporation as of December 31, 1939?

A. I wouldn't except under compulsion. Consolidated Oil Corporation has some 85,000 stockholders and I couldn't see any purpose in the world of dragging all 85,000 names into this proceeding.

Q. What about the twenty largest stockholders? Would you be willing to produce those?

A. I will agree to do this, Mr. March, if it will be satisfactory to you: If the twenty largest stockholders are a matter of public record, I'll find that record and give it to you. I think they are.

Q. As of December 31, 1939?

A. I don't know about that. I'll give it to you as of the latest available date.

Mr. March: I'd appreciate it very much, Mr. Dougherty, if this witness would produce here—pardon me, Mr. Keffer—if this witness would produce here the twenty largest stockholders of Consolidated Oil Corporation as of December 31st, 1939, and I feel that it is a reasonable request if the Examiner please. If the Examiner desires me to state the relevancy of that I will.

The Trial Examiner: No, I have no desire for you to state it, Mr. March.

Mr. Dougherty: Might I make a suggestion about that date. Frequently lists are prepared for annual meetings and for dividend purposes. Now, supposing that happens to be December 15th?

Mr. March: That's all right.

Mr. Dougherty: What you want is the closest available date to 1939.

(Vol. IV, pp. 587-599.)

Recross Examination (Continued)

By Mr. March:

Q. Your name is P. C. Spencer and have previously testified in this case?

A. Yes, sir.

Q. I refer you to Exhibit No. 38. I note that letter is dated March 10, 1930. Was that the same date of the original agreement relative to this project?

A. I believe it is the same date, Mr. March.

Q. Would you call that an amendment to the contract?

A. Well, I would either call it an amendment or supplement of something. It certainly was a part of the contract after it was signed.

Q. Why didn't the contract refer to it?

A. Now let me explain to you, Mr. March, this: You asked me a question, I believe, on Monday after reading from the Federal Trade Commission report of some other report out of the original contract provision which stated that Standard of New Jersey had agreed to furnish or cause Canadian—

Q. Cause Canadian River?

A. Cause Canadian River to furnish twenty-five per cent of the market requirements for the Chicago line. You asked me how they could do that. I had seen a copy of this letter—call it a supplement or amendment or whatever you will—and I testified that I didn't believe they could make such an arrangement or intended to without the consent of Southwestern. You asked me to produce that supplemental agreement and I asked Mr. Dougherty for it and he has provided this instrument for me to give to you.

Q. Why isn't it notarized?

A. I don't know. I don't think it is notarized.

Q. You don't think it is?

A. Sir?

Q. I don't see it here.

A. I thought your question^s—

Q. Why isn't it notarized?

A. I don't know. At the time, Southwestern was not a party to the Chicago project or enterprise.

Q. Have they ever been a party to it?

A. Yes, they became a party subsequent to this date. I think it was in June of that year.

Q. In what way did they become a party?

A. They became a participant and agreed to buy the bonds and stock. In fact, the bonds and stock that they agreed to buy are the same that they now hold today.

Q. Have you those agreements relative to the Canadian

River agreement to furnish twenty-five per cent of the requirements for the Chicago line?

A. Canadian River has never agreed to furnish twenty-five per cent to the Chicago line. That contract is with Colorado Interstate Gas Company.

Q. Colorado Interstate Gas Company agrees to furnish twenty-five per cent of the requirements of the Chicago line?

A. Mr. Dougherty has just concluded putting the contracts and supplements and amendments into the record.

Q. What is Colorado Interstate doing making the contract when Canadian River owns the reserves? I think you misunderstood my question.

A. I certainly do, Mr. March. Will you tell me what you have in mind, please?

Q. Colorado Interstate didn't have these gas reserves, did it?

A. Colorado Interstate has a call on Canadian River for whatever gas it wants to take.

Q. And so Canadian River Gas Company didn't agree to make available twenty-five per cent of the reserves to the Natural Gas Pipeline Company of America; that was done in the upper stratosphere?

A. It was perfectly agreeable to Canadian River. I think they did enter into some kind of an agreement which facilitated Colorado Interstate's ability to furnish twenty-five per cent.

Q. They would have to, wouldn't they?

A. Yes, they did.

Q. Where is that agreement? That is the agreement I want.

A. It is already in the record. We introduced that the first day.

(Conference outside the record.)

The Witness: The agreement between Canadian River Gas Company and Colorado Interstate Gas Company with reference to this transaction which we have been discussing is on the first sheet of Exhibit No. 15 about the fourth or fifth item listed on that page.

By Mr. March:

Q. That has not been filed with the Federal Power Commission?

A. No, it has not been filed with the Federal Power Commission but it was included with the contract—

Q. We have copies marked for the record here already?

A. Yes, that is right. They are in this bound volume that we have already introduced.

Q. I just wanted to let the record show that in order to tie the proposition into this letter here.

I want to get to the principal point here which is this: Is there any agreement that Standard Oil Company entered into with Canadian River relative to the furnishing of twenty-five per cent of the requirements for this line?

A. No agreement whatever.

Q. I quote here in this letter an agreement as follows:

"The Standard Oil Company (N. J.) has not yet been able to effect the necessary arrangements to permit it to furnish such gas on a basis satisfactory to it and is not yet certain it will be able to perfect such arrangements—"

What I want is the arrangements which were perfected by Standard Oil, the contract relative to that arrangement.

A. They are talking about arrangements with Southwestern, Mr. March, and the arrangements with Southwestern were finally perfected. They were perfected through an agreement under the terms of which Southwestern became a participant in the Chicago project and took over one-half of the participation of Standard, the participation Standard had at that time.

Q. That agreement is in evidence?

A. That agreement is not in evidence.

Q. Will you produce that agreement for the record?

A. That is the same agreement you asked for before. It will be shown in the agreements heretofore that you have asked for; to-wit, the supplements and amendments to the Chicago contract.

Q. You will obtain all agreements, oral and written, relative to the commitment of Southwestern Development Company to require Canadian River Gas Company to make available twenty-five per cent of the reserves to the Natural Gas Pipeline Company of America, will you not?

A. I have already produced all there is as far as the Canadian River is concerned.

Q. I am talking about as far as Standard is concerned. I want the contracts and agreements Standard entered into with anybody relative to this 25 per cent commitment which Canadian made. I understood you to say that Southwestern Development Company made all of the commitments for Canadian River and made them with Standard. I want the agreement with Standard, the agreement which Standard entered into with the Southwestern Development Company and Canadian River relative to this 25 per cent commitment here of the reserves of the Canadian River.

A. I understand perfectly and it will be very easy—

Mr. Dougherty: Might I suggest it isn't twenty-five per cent of the reserves of Canadian River. The project is to sell twenty-five per cent of the requirements for the Chicago line.

Mr. March: That is right.

Mr. Dougherty: That is a different thing.

Mr. March: I might have misstated it. It is twenty-five per cent of the requirements of the Natural Gas Pipeline Company of America.

Q. Do you know who negotiated this agreement with Southwestern, relative to the Canadian River, with the Standard Oil?

A. Nobody negotiated for reserves here. Again we are talking about a contract to sell twenty-five per cent of the requirements of the Chicago Pipeline project.

Q. Well, take it that way—

A. The negotiations with respect to Southwestern's participation in the Chicago project carried on—it was carried on principally between Mr. Moody and Mr. Payne, as I recall it.

Q. Mr. Moody representing—

A. Southwestern.

Q. Mr. Payne representing Standard Oil Company (N. J.)?

A. That is right.

Q. What did you have to do with those negotiations?

A. I wasn't in on them.

Q. You don't know anything about them except hearsay?

A. All I know is what the documents show that grew out of it, Mr. March.

Q. Where did you get this document here, from Mr. Dougherty?

A. I asked Mr. Dougherty for it.

Q. Didn't you have a copy of this agreement in your files?

A. I think we have, but I don't know where we got it. I couldn't be responsible for it. I couldn't say that the one in our files is correct, so I asked Mr. Dougherty to get one that would have more authenticity.

Q. Where did he get it?

A. Maybe we had better put Mr. Dougherty on the stand. I don't know. I would like to get him up here.

Mr. March: I don't want anybody to get me up there.

The Trial Examiner: Mr. March, are you about finished?

Mr. March: Just one more final question.

Q. Just who was this Central States group? I know it was stated here but why is that group treated together, Reid L. Carr acting for all parties in the Central States group?

A. Well, Mr. March, you ask me to testify to these things and I give you the best I know and then you tell me later that I don't know anything about it. I will go ahead and tell you that it is my impression and information that those parties specified as the Central States group were composed of Columbian Carbon Company, Texas Corporation, Phillips Petroleum Company, and Skelly Oil Company were acting as a group. I believe they authorized Mr. Carr to act for them in the capacity of a representative.

Q. And Phillips Petroleum Company subsequently sold its interests?

A. They did.

Q. So did the Skelly Oil Company?

A. So did the Skelly Oil Company.

(Vol. IV, pp. 613-621.)

Cross Examination.

By Mr. March:

*Q. Mr. Spencer, I have a transcript of a portion of your testimony before the Securities and Exchange Commission in the matter of Southwestern Development Company, October 11, 1940, on Page 16 thereof, where a question was asked you and you answered it. Will you read that question and answer and tell me whether or not that is your testimony?

*Q. Can you state the general position of the reserves at this time and whether or not they are adequate for the supply of additional gas to the Wisconsin area?

*A. I am not a geologist or an engineer. I can say for the record that the question of gas reserves held by Natural Gas Pipeline Company and the Texoma Natural Gas Company has been rather an important issue in the Natural Gas Pipeline Company rate case now pending before the Federal Power Commission. In that case, as I recall, engineers for the Government have testified that the companies have reserves which should be sufficient to serve their markets for 30 to 40 years. On the other hand, the geologists and engineers of the companies have indicated a possible much shorter life; that is to say, I think they have estimated that they had adequate gas reserves until 1954, although I am not quite certain about the qualifications that may be attached to that data."

Q. You may continue reading down to the middle of Page 17.

A. *Q. Do you know whether or not that estimated life also included the possible supply or requirements of the line which is now built to Milwaukee?

*A. Not specifically, but these estimates are based upon very broad markets and market increases that may be expected for the entire Texas Panhandle field.

*Q. Do you know whether or not your production and engineering officials have indicated whether they believe there are unexplored reserves that might be available for the system if it should be required; that is, unexploited or unused reserves?

"A. Well, we know that new gas fields are constantly being opened up and old gas fields also being extended. We also know that there is a substantial quantity of natural gas reasonably adjacent to our present market.

"Does that answer your question?

"Q. Is that held by The Natural Gas Pipeline System; that is, Texoma and Colorado Interstate, or what adjacent supply do you have in mind?

"A. There are thousands and thousands of acres of gas lands running from Oklahoma, Kansas and Texas, not controlled and being operated by Texoma Natural Gas Company, which at the present time is not connected to any large interstate pipe line."

"Q. That's all. Now, is that your testimony in that case?

A. It sounds very much like it, Mr. March.

Q. Well, do you think it is?

A. I do.

Q. Well, now, that was a case involving the purchase of certain bonds by the Southwestern Development Company?

A. As I recall, Mr. March, this particular proceeding before the Securities and Exchange Commission involved both the acquisition and issuance of securities by Southwestern Development Company.

Q. As one of the chief executive officers of the companies involved here, controlling Canadian River Gas Company, what is the position of the management with reference to reserves? Are they taking the Federal Power Commission's word for the estimate of reserves, or the opinions of their own engineers?

A. Why, obviously, if they are going to employ engineers and geologists in whom they have confidence, they are going to rely on the judgment and conclusions of those engineers and geologists.

Q. Why did you bring out in this testimony in this case before the Securities and Exchange Commission, where it is of interest to show that you had large reserves, the Federal Power Commission estimate of reserves?

A. Well, when I am a witness I always try to give as much information and data as I can to the attorney cross

and geologists of the government thought about it as well as our own engineers and geologists.

Mr. March: That's all.

Redirect Examination.

By Mr. Dougherty:

Q. Mr. Spencer, the pipe line you were discussing in connection with that testimony as I understand it was of the Natural Gas Pipeline Company of America?

A. That's right.

Q. It had no relationship to the Colorado Interstate Gas Company or the Canadian River Gas Company?

A. None whatsoever.

Q. And when you were speaking about the reserves adjacent to the pipe line, that was adjacent to the pipe line of the Natural Gas Pipeline Company?

A. That's right.

Q. Because that had to do with the acquisition by Southwestern Development Company of certain securities of the Natural Gas Pipeline Company?

A. That is correct.

Recross Examination.

By Mr. March:

Q. However, the reserves of the Canadian River Gas Company are involved when you speak of the Texoma Natural Gas Company, aren't they?

A. They would be indirectly in so far as it involved the contract for the sale of 25 per cent of the Natural Gas Pipeline Company's requirements by the Colorado Interstate Gas Company, yes.

EXHIBIT 146 A

In the District Court of the United States for the District of Wyoming:

Consolidated Oil Corporation, Complainant, vs. Producers and Refiners Corporation, Defendant. In Equity No. 2217. Filed June 12, 1933. Charles J. Ohnhaus, Clerk.

Answer of Complainant Consolidated Oil Corporation to Counterclaim of Preferred Stockholders Protective Committee.

Comes now Consolidated Oil Corporation, Complainant herein and now and at all times saving and reserving unto itself all benefits and advantages of exception which can or may be had or taken to the errors or uncertainties or other imperfections in the so-called objections and in the counter-claim of Ernest Sturm, Sherman M. Bijur and James G. Stanley as the Protective Committee constituted by and acting under a Protective Agreement dated August 1, 1932, for Cumulative Convertible Seven Per Cent. Preferred Stock of Producers and Refiners Corporation, for its answer to said counterclaim says:

III.

Answering paragraph 3 of said counterclaim, Complainant admits that shortly after December 5, 1923, to-wit, on December 29, 1923, the Prairie Oil & Gas Company caused to be elected to the Board of Directors of defendant corporation W. S. Fitzpatrick, Dana H. Kelsey and N. K. Moody, who were also directors, officers and stockholders of The Prairie Oil & Gas Company, and admits that during the years from 1924 to 1931, inclusive, said persons were annually elected directors of defendant corporation and directors of The Prairie Oil & Gas Company, but Complainant says that said persons resigned as directors of defend-

ant corporation on April 9, 1932 and at no time thereafter was any of them a director of defendant corporation. Complainant admits that during the period from January 1, 1924 until the commencement of this suit The Prairie Oil & Gas Company, through its ownership of 65 1/2% of the common stock of defendant corporation, caused to be elected to the remaining four places on the Board of Directors of defendant corporation persons selected by it who were at all times officers or employees of defendant corporation, and says that The Prairie Oil & Gas Company did so by having a duly authorized attorney attend each annual meeting of stockholders of defendant corporation held for the election of directors during said period and by having said attorney vote for seven members of the Board of Directors nominated by it. Complainant further says that no officer or director or employee or agent of The Prairie Oil & Gas Company ever solicited the proxy or held the proxy or as proxy voted the stock of any other stockholder of defendant corporation at any election of directors during said period; that throughout said period many holders of preferred stock of defendant corporation, by their proxies and attorneys, voted for the nominees of The Prairie Oil & Gas Company as directors of defendant corporation; and that throughout said period no holder of either preferred or common stock of defendant corporation ever voted against any such nominee of The Prairie Oil & Gas Company or in favor of any person not a nominee of The Prairie Oil & Gas Company. Complainant denies "that at no time during the period from January 1, 1924 until the date of the commencement of this action was any person selected for membership on the Board of Directors as a representative of the minority common stockholders of said defendant corporation or of the preferred stockholders of said defendant corporation" and says that at all times during said period each and every director was nominated and elected as a representative of all the stockholders of defendant corporation. Complainant denies that "none of the directors of said defendant corporation were stockholders thereof at any time during their tenure of office as such directors" and says that each and every director at all times during his tenure of office was a stockholder of defendant corporation.

XIX.

Paragraph 19 of said counterclaim should be dismissed and stricken from said counterclaim as it does not state facts sufficient to constitute a valid counterclaim in equity. Said paragraph shows on its face that defendant corporation owns but 51% of the stock of Southwestern Development Company and that if anybody has a claim against The Prairie Oil & Gas Company by virtue of any matter alleged therein it is Southwestern Development Company and not the defendant corporation.

Complainant therefore moves to strike said paragraph 19 of said counterclaim, and subject to such motion to strike, in answer to said paragraph admits that in July, 1924, Southwestern Development Company was incorporated under the laws of the State of Colorado with an authorized capital stock of 50,000 shares of no par value, of which 40,806 shares were issued. Complainant admits that 19,995 shares, or 49% of the stock of Southwestern Development Company were issued to The Mission Oil Company, and 20,811 shares, or 51%, were issued to The Mountain States Gas Company. Complainant admits that the Mountain States Gas Company was a wholly owned subsidiary of defendant corporation and that it was later dissolved and the stock of Southwestern Development Company held by it turned over to the defendant corporation, which ever since has been and now is the owner and holder thereof of record, but Complainant says that neither defendant corporation nor Complainant owns directly or indirectly any stock, nor otherwise has any interest in The Mission Oil Company which owns the remaining 49% of the stock of Southwestern Development Company. Complainant admits that prior to the organization of said Southwestern Development Company, The Prairie Oil & Gas Company had agreed to purchase for cash from The Mission Oil Company at \$3 1-3% of par, all or any part of the bonds of Southwestern Development Company which The Mission Oil Company had or might acquire. Complainant denies that thereafter The Prairie Oil & Gas Company purchased certain of said bonds of Southwestern Development Company at a price approximately \$3 1-3% of the face amount thereof and paid a total sum, including interest, of \$1,524.

266.68 as alleged, but says that in the year 1924, pursuant to said agreement with The Mission Oil Company, The Prairie Oil & Gas Company did purchase from it at \$3 1-3% of par Southwestern Development Company bonds in the amount of \$1,399,650 par value and that subsequently, in the years 1926 and 1927, The Prairie Oil & Gas Company did purchase Southwestern Development Company bonds from other third parties in the amount of \$208,530 par value, at various prices, the total cost of all of such bonds to The Prairie Oil & Gas Company, including accrued interest paid thereon, being approximately the sum of \$1,524,266.68. Complainant further says that The Prairie Oil & Gas Company did not at any time desire to purchase any of said bonds for the purpose of making a profit thereon, but that The Prairie Oil & Gas Company purchased all of said bonds in order to aid the business and affairs of Southwestern Development Company and because neither defendant corporation nor Southwestern Development Company had any funds at the times said purchases were made with which to finance such purchases, and says that without such aid and assistance said Southwestern Development Company would have been unable to assemble and develop its properties and to participate in the extensive gas projects in which it subsequently became interested. Complainant admits that thereafter and in the year 1928 Southwestern Development Company did retire such bonds at the face amount thereof plus accrued interest, and that The Prairie Oil & Gas Company received on account of the bonds which it had purchased for the purpose aforesaid a total sum of approximately \$1,835,202.59, but denies that The Prairie Oil & Gas Company caused Southwestern Development Company to retire said bonds. Complainant admits that the net profit made by The Prairie Oil & Gas Company on said transaction was approximately \$310,935.91, but denies that said profit was excessive or unfair or unwarranted or was obtained by The Prairie Oil & Gas Company for the reason that The Prairie Oil & Gas Company owned a majority of the common stock of defendant corporation, or by reason of the alleged interlocking directorates of said three companies, or by reason of any alleged control or domination of the Board of Directors of defendant corporation or of

Southwestern Development Company by Said The Prairie Oil & Gas Company.

Paragraph 20 of said counterclaim should likewise be dismissed and stricken from said counterclaim as it does not state facts sufficient to constitute a valid counterclaim in equity, for the same reasons as stated in paragraph XIX hereof, and complainant moves to strike said paragraph 20 from said counterclaim.

Subject to such motion to strike, and answering said paragraph 20, Complainant denies that the Canadian River Gas Company received the sum of \$5,000,000 for the sale of leases or that said sum was seized by The Prairie Oil & Gas Company or used by it to reimburse itself for advances to Southwestern Development Company or its subsidiaries, but says that early in the year 1928 the Amarillo Oil Company agreed to sell its gas properties to Canadian River Gas Company for a consideration of \$5,000,000 cash; That Canadian River Gas Company was formed for the purpose of (1) acquiring the gas properties of Amarillo Oil Company, (2) constructing a pipe line from the Amarillo field to a point to connect with the pipe line of Colorado Interstate Gas Company, and (3) selling gas to Colorado Interstate Gas Company, Amarillo Oil Company and others. Complainant says that the Colorado Interstate Gas Company advanced or caused to be advanced the sum of \$5,000,000, which the Canadian River Gas Company was to pay for the gas properties of Amarillo Oil Company; that said \$5,000,000 was not paid directly to Amarillo Oil Company, but was paid to The Prairie Oil & Gas Company; that the Colorado Interstate Gas Company was not willing to advance said \$5,000,000 to the Canadian River Gas Company or to the Amarillo Oil Company or to Southwestern Development Company until such time as the Amarillo Oil Company had fully performed all of the obligations imposed upon it under the above mentioned agreement, but did consent to advance said sum only to The Prairie Oil & Gas Company on the latter's responsibility and credit and agreement to see to the proper application of the money, or in case the project fell through for any reason to return said money with interest at the rate of 6%. Complainant admits that said sum was used in part to reimburse The

Prairie Oil & Gas Company for advances made by it to Southwestern Development Company and its subsidiaries, but denies that any of said advances were excessive or erroneous or incorrect, and denies that The Prairie Oil & Gas Company was enabled to reimburse itself as aforesaid by reason of the fact that it owned a majority of the common stock of defendant corporation, or by reason of alleged interlocking directorates of all three corporations, or by reason of any alleged domination or control of the Board of Directors of defendant corporation or of Southwestern by The Prairie Oil & Gas Company. Complainant says that The Prairie Oil & Gas Company did not make improper use of any portion of said sum of \$5,000,000 which was so advanced to it and that neither Southwestern Development Company nor defendant corporation was in any way damaged or aggrieved by reason of any matter alleged in said paragraph 20 of said counterclaim, but on the other hand that said Southwestern Development Company and defendant corporation as a stockholder therein were greatly benefited thereby.

Wherefore, Complainant prays that said counterclaim of the Preferred Stockholders Protective Committee be dismissed with costs, and that Complainant have such other and further relief in the premises as may be equitable and just.

G. T. STANFORD,

R. W. RAGLAND,

W. E. MULLEN,

Solicitors for Complainant.

Certified Copy.

D C Form No. 30

United States of America, District of Wyoming, ss.

I, Charles J. Ohnhaus, Clerk of the United States District Court in and for the District of Wyoming, do hereby certify that the annexed and foregoing is a true and full copy of certain designated excerpts from the Answer of Complainant Consolidated Oil Corporation to Counterclaim of Preferred Stockholders Protective Committee filed in this court on the 12th day of June, A. D. 1933, in civil cause No. 2217, Con-

Consolidated Oil Corporation, Complainant, vs. Producers and Refiners Corporation, Defendant, now remaining among the records of the said court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid court at Cheyenne this 18th day of November, A. D. 1940.

CHARLES J. OHNHAUS, Clerk.

(Seal)

By _____, Deputy Clerk.

With reference to the introduction of Exhibit 146-A in evidence, and the objections thereto, and the ruling of the trial examiner thereon, the following appears in the record:

Mr. Examiner, I have a document here that I would like to have marked for identification at this time. It won't take but a minute and then I can give opposing counsel a copy of it to examine before it is ruled on later in the day.

The Trial Examiner: What is to be marked for identification?

Mr. March: This is a certified copy of the pleading filed with the United States District Court, for the District of Wyoming; Cheyenne, Wyoming. I will read the certification which will explain the document: "I, Charles J. Ohnhaus, Clerk of the United States District Court in and for the _____ District of Wyoming, do hereby certify that the annexed and foregoing is a true and full copy of certain designated excerpts from the answer of complainant Consolidated Oil Corporation to counterclaim of Preferred Stockholders Protective Committee filed in this court on the 12th day of June, A. D. 1935, in civil cause No. 2217, Consolidated Oil Corporation, complainant, versus Producers and Refiners Corporation, defendant."

It was duly certified to on November 18, 1940.

This is the company's own statement, the Consolidated Oil Corporation's own statement as to what it had to do with the disposition of it and what its predecessor, the Prairie Oil & Gas Company had to do with the five million dollars. It is likewise the Consolidated Oil Corporation's own statement as to the control of the Southwestern De-

velopment Company by Producers and Refiners Corporation, and Producers and Refiners Corporation in turn by the Prairie Oil & Gas Company.

The Examiner is familiar with the requirements that these pleadings should be sworn to in court. I offer them so that they will be marked for identification.

The Trial Examiner: Suppose they be marked for identification as Exhibit No. 146-A inasmuch as it has to do with that particular exhibit.

(Vol. XLIX, pp. 6717-6718.)

Mr. March: Good. We are also considering here Exhibit 146-A—I have stated my argument as to the relevancy of it here—which is the answer of complainant, Consolidated Oil Corporation, to counterclaim of preferred stockholders protective committee filed with the clerk in the District Court of the United States for the District of Wyoming.

The Trial Examiner: Do you desire to proceed first with Exhibit 146-A?

Mr. March: We might dispose of that first. Shall I restate my relevancy argument there?

The Trial Examiner: I don't believe it will be necessary.

Mr. March: All right, sir.

Mr. Spenger: Mr. Examiner, Exhibit 146-A consists of part of an answer made by Consolidated Oil Corporation, complainant in the case involving the receivership of Producers and Refiners Corporation to a counterclaim of Preferred Stockholders Protective Committee.

In other words, the Consolidated Oil Corporation in this instance is answering the counterclaim of a Preferred Stockholders Protective Committee. The answer is not here in its entirety; certain parts of the answer have been selected for this exhibit. The counterclaim which brought forth the answer is not here and none of the evidence that was taken upon the counterclaim or the answer is here. The extracts taken from this answer for the purpose of plead-

ings—I want to emphasize that—for the purpose of pleadings admitted and denied certain allegations made in the counterclaim. It is obvious that the parties to this proceeding here and the issues involved are entirely different than the parties and the issues involved in this receivership proceeding.

Certainly it could not be said that Southwestern Development Company or any of its subsidiaries or any other party to this proceeding so far as I know has ever had any opportunity to cross examine any witnesses on the material contained in this answer.

Furthermore, at the time the answer was made, Consolidated Oil Corporation, as far as the record shows, owned no interest in Southwestern Development Company or any of its subsidiaries.

Now, it might be said—in fact, I expected counsel to argue that this might go in as an admission against interest. If counsel considers it such, I don't know any rule of law that would permit Consolidated Oil Corporation to make any admission against interest which would bind the parties to this proceeding here. I am objecting to it because it is inadequate; because it is incompetent, and has no place as an exhibit or as evidence in this hearing.

Mr. March: I would like to state, Mr. Examiner, that obviously I could not remove from the United States District Clerk's office the official records of that proceedings.

I would like to further state that I have here, and the Examiner knows, a certified copy of that answer.

Mr. Spencer: I am not questioning that.

Mr. March: I would like to further state here that the Examiner can read this and see that here was a statement made, not in the spirit of controversy of this case. It was made stating absolute facts. It shows conclusively that Prairie Oil & Gas Company controlled and exercised the control of the Producers and Refiners Corporation. The Producers and Refiners Corporation, which controls Southwestern Development Company, which controlled both the Canadian River Gas Company and the Amarillo Oil Com-

pany at the time this five-million-dollar lease transaction took place. It is evidence which is of first rate, and I would like to state that in previous proceedings I have offered evidence from the actual pleadings in the United States District Court and I have yet to have them challenged.

The only other thing I could do, Mr. Examiner, is put Mr. Spencer on the stand. Mr. Spencer was the receiver for the Producers and Refiners Corporation at this time, June 12, 1933.

This is more valuable than any testimony. It was not made in the spirit and heat of controversy. There is nothing here to hide. They come right out and admit what happened here. This establishes conclusively not only that the Prairie Oil & Gas Company had the power—had enough stock to exercise the control of the Producers and Refiners Corporation, but it is important here to show that they actually did do it; they actually exercised it and this shows it.

Mr. Spencer: It is not testimony, Mr. Examiner.

Mr. March: I don't say it is testimony.

Mr. Spencer: It is a portion of pleadings, the admissions and denials made for the purpose of pleadings.

The Trial Examiner: Well, I don't know that the particular exhibit, strictly speaking, could be regarded as an admission against interest, but as I understand your objection, Mr. Spencer, it does not go to the use of certified copy in the proceeding.

Mr. Spencer: Oh, no.

The Trial Examiner: It goes to the weight of the material, and I have gone over this exhibit rather carefully and I note that it deals, of course, with some of the matters that might be regarded as being in the background of this proceeding.

Mr. Spencer: Before the Examiner rules, I would like to say one thing more.

The Trial Examiner: Very well.

Mr. Spencer: I didn't wish to interrupt you.

The Trial Examiner: That's all right.

Mr. Spencer: But so far as Consolidated Oil Corporation was concerned, everything that they have said there, everything admitted or denied for the purpose of pleadings, was pure hearsay.

Mr. March: I don't think it was pure hearsay. Here the Consolidated Oil Corporation comes in and had to make an answer. They came in and made an answer. What kind of people are they? Do they come in and make a sworn answer in one case different from another answer? Mr. Spencer is attorney for the Consolidated Oil Corporation which is a company which controls Southwestern Development Company. It is vitally hooked up with this case. It is not in the background, it is in the foreground—four million dollars are involved here.

Mr. Lange: It is a sworn pleading, Mr. Examiner, and in the Federal Court, Mr. Examiner, a sworn pleading of that sort certainly would be admissible in this proceeding.

The Trial Examiner: I understand there is no objection on the basis of the foundation for the exhibit, but let me say this, that the Examiner will have occasion to study that particular exhibit quite carefully in the future and if it has any weight or bearing in this proceeding, the Examiner will give it its proper weight at that time, and for that reason the objections now raised will be overruled and Exhibit 146-A will be received.

(Exhibit 146-A received in evidence.)

Mr. Spencer: Then, Mr. Examiner, I wish an opportunity to look over the rest of the record in receivership action and determine what additional portions of that record I wish to offer in rebuttal to anything that may be contained in here.

The Trial Examiner: I should perhaps have mentioned that with reference to your statement, that portions of the record might be missing and that counsel would be afforded an opportunity if they so desired to furnish parts they felt were important and omitted from the record.

Testimony of CHRISTY PAYNE.

Mr. Dougherty: Mr. Payne.

Whereupon—

CHRISTY PAYNE called as a witness on behalf of the Colorado Interstate Gas Company, having been first duly sworn, deposes and says as follows:

Direct Examination.

By Mr. Dougherty:

Q. Will you state your name and address?

A. Christy Payne, 800, South Palm Avenue, Sarasota, Florida.

Q. What is your business today, Mr. Payne?

A. I haven't any business. I am retired.

Q. Since when did you reach that enviable state?

A. Under the retirement plan of the Standard Oil Company in force for employees, I retired August 1, 1935, after forty years service.

Q. Prior to that time, were you connected with Standard Oil Company, the New Jersey Corporation?

A. Yes, sir.

Q. And what was your official connection at the time of your retirement?

A. I was then—or just prior to the annual meeting of June 1935, I was a vice president, director and treasurer.

Q. Prior to assuming those offices, had you been connected with subsidiaries of the Standard Oil Company, the New Jersey Corporation?

A. Yes, sir.

Q. Were those generally natural gas subsidiaries?

A. Generally the natural gas subsidiaries, yes, sir.

Q. And I believe you said that at your retirement you had more than forty years of service?

A. That is right.

Q. Did you ever hear of the Colorado Interstate Gas Company?

A. Yes, sir. I believe I was its first president.

Q. At my request, have you prepared a statement concerning the early history and other facts about the forma-

tion, organization and character of business of that company?

A. I have.

Q. Will you read that statement into the record at the present time?

A. It is dated October 22, 1940.

Pardon me, off the record. Will I read this title?

A. No, just start in with the text; that is all you need.

A. From 1926 until July 1, 1933, I was in charge of the natural gas interests of Standard Oil Company, a New Jersey corporation—hereinafter referred to as "Standard Oil"—and was associated with Colorado Interstate Gas Company—hereinafter referred to as "Colorado Interstate"—from the beginning, being its first president.

Colorado Interstate Gas Company was incorporated under the laws of Delaware June 8, 1927. It was a part of a project organized for the purpose of selling in Colorado natural gas which would be produced in Texas in the gas field known as the Amarillo or Panhandle field.

As finally developed, Colorado Interstate constructed a pipe line from a location near Clayton, New Mexico, to the vicinity of Denver, with certain lateral lines extending from the main pipe line. I understand that a physical description of the line will be given by other witnesses.

At Clayton there is a connection with the pipe line of Canadian River Gas Company—hereinafter referred to as "Canadian River"—which company produces the gas and delivers it to Colorado Interstate at Clayton.

The possibility of Standard Oil participating in this natural gas pipe line enterprise was first brought to our attention in 1926 by officials of Southwestern Development Company.

Leases on large blocks of acreage in the Panhandle field, upon which approximately twenty gas wells had been drilled, were held by a subsidiary of Southwestern Development Company.

We were advised that Denver and other points in Colorado seemed to offer the best available markets to be

served from these gas reserves, and that there was considerable public agitation in the city of Denver looking toward the substitution of natural gas for the manufactured gas then being supplied consumers in that city.

Public Service Company of Colorado, a subsidiary of Cities Service Company, had distributed manufactured gas in Denver for a number of years. On February 8, 1927, a new franchise was granted Public Service Company by a majority vote of the qualified electors.

This franchise contained a provision looking toward the bringing of natural gas to Denver. Public Service Company was obligated to make a supply of natural gas available to the city if the Mayor and Council of the city, after investigation and upon competent engineering advice and taking into consideration all the economic factors involved, should determine that a natural gas supply for Denver was feasible.

A penalty of Fifty Thousand Dollars (\$50,000.00) per year was provided for if Public Service Company defaulted in carrying out the terms of that provision.

This indicated to us that the City of Denver was earnestly seeking a natural gas supply for its citizens, and on the basis of that we actively carried on the work necessary to the development of the project.

During 1926, after preliminary negotiations with Southwestern Development Company, a tentative understanding had been reached on the purchase price to be paid for the leases, wells and gas reserves which were to constitute the gas supply. It was expected that the financing of the project would be undertaken by Standard Oil, and that Southwestern Development Company and Standard Oil each were to have an equal stock position in the company.

During 1926, some negotiations had been carried on with representatives of Public Service Company, but it was not until after the approval of the franchise by the voters of Denver that we were in position to conclude an agreement among the interested parties. This was done, and under date of April 5, 1927, an agreement was entered into by

Southwestern Development Company, Cities Service Company and Standard Oil Company, a New Jersey corporation.

A copy of this contract has been introduced as an exhibit in this proceeding, numbered Exhibit 1. This agreement of April 5, 1927, was the culmination of the negotiations which began in 1925 and were continued with considerable activity after February 8, 1927.

The terms were agreed upon only after a series of conferences at which various plans were considered and the viewpoints of all the parties were put forward and thoroughly discussed. Since Standard Oil was assuming the responsibility of putting up the money for the project, we exercised the utmost care and our best judgment, in all of the matters under consideration, and the willingness of the company to proceed with this project depended entirely upon the basis agreed to by the parties.

The investigations which had been made at my request clearly disclosed that it was not economically possible to bring gas to Denver solely for the domestic and ordinary commercial business there available.

At Pueblo was a large steel plant of the Colorado Fuel & Iron Company offering the possibility to a large industrial load. It was necessary to obtain this business in competition with the fuel then being used, and both this load and the Denver load were indispensable to the project.

We expected to take on certain other business that our investigations indicated was there, including the Cities of Colorado Springs and Pueblo, and certain industrial customers. These additional industrial contracts were to be subject to the prior call of Denver on the gas reserves of the project.

During the summer of 1927 a number of conferences were held with the Mayor and other officials of the City of Denver. A letter proposal embodying the general principles under which gas would be sold to Public Service Company was written to that company under date of June 8, 1927, by Colorado Interstate and that formed the basis of the negotiations with the City officials.

This proposal provided that details were to be worked out in a contract to be prepared later. It was a matter of great public interest and intense application on the part of all parties.

The city had employed A. C. King, a consulting engineer, of Chicago, Illinois, to advise it on all factors of the matter, and Mr. King made an independent investigation and made a formal report dated August 10, 1927, on the project. I understand this report will be made a part of the record in this proceeding.

After many discussions and conferences with the representatives of the City of Denver the rate at which gas was to be sold to Public Service Company was agreed upon at forty cents per mcf for domestic gas.

An ordinance was passed by the City Council on September 14, 1927 making a formal declaration of the feasibility of bringing natural gas to Denver and fixing the rates which were to be charged by Public Service Company for gas distributed by it.

These rates were based upon the payment by Public Service Company of a gate rate of forty cents per mcf for domestic gas. The passage of this ordinance completed the action of the City with respect to the bringing of natural gas to Denver, and we then entered into the work of drafting a contract for the sale of gas and for the construction of the line.

The contract with Public Service Company was finally executed in June, 1928, although dated as of January 3, 1928. At this time Colorado Interstate had not been engaged in the gas business and was under no obligation to enter or carry on that business except upon terms and conditions satisfactory to it.

One of the matters that was given especial consideration by those interested in this project concerned the character of operation in which Colorado Interstate should engage. There was a group of small communities in eastern Colorado, such as Rocky Ford, La Junta and Las Animas which had no gas service of any character and there were certain other communities and enterprises that seemed to furnish available markets for natural gas. A decision had to be

made as to whether this company was to operate as a public utility engaging in the sale of natural gas generally to all customers, including domestic ones, or whether it would limit the character of its operations and deal only with selected customers and sell gas only under specially negotiated contracts.

After considering all aspects of this problem, it was the unanimous opinion of those interested that the pipe line company should not attempt to expand its business to that of a public service character, but it would make contracts for the sale of gas at prices agreed upon with its customers, and with only those customers which it felt it could supply at negotiated prices.

Our investigations made us believe that we could safely develop a gas supply for a period of twenty years and that the enterprise would be justified on a basis of forty cents per net gate rate for domestic gas, and the sale of gas to industries in competition with the fuel prices then in existence.

We did not want to assume the privileges or duties of a public service company which would entail obligations beyond those voluntarily assumed in our contracts.

Accordingly, when Colorado Interstate was organized, a special provision was inserted in its Certificate of Incorporation providing that the company was not to operate as a public utility and was to sell gas only by special contract.

The company never engaged in distributing gas generally to consumers, it made no filings of schedules with the Public Service Commission of Colorado, never advertised that it would sell gas to all who might apply, had no general schedule of rates, and made no sale of gas except pursuant to a special contract negotiated with each customer.

It never sought or obtained any franchise right or privilege from any governmental authority to engage in the sale of gas and did not construct its pipe line in any municipality. It never held itself out as being willing to sell generally to the public.

During the entire period that I was associated with the management of Colorado Interstate, every contract was separately negotiated with the customer and in every instance the considerations peculiar to that customer's business were considered and the contract of sale made in recognition of these special problems.

The company did not have the power of eminent domain and never exercised or attempted to exercise that power. All of its property was purchased after negotiation with the owner.

The financing of the cost of this enterprise was done through the issuance of \$19,200,000.00 of bonds of Colorado Interstate, substantially all of which were acquired by Standard Oil, with the remainder being purchased by an individual, and in addition, \$2,000,000.00 was paid by Standard Oil for the preferred and common stock which it received.

Colorado Interstate purchased \$11,000,000.00 of bonds from Canadian River, which then acquired the leases, producing wells and other properties in Texas from the Amarillo Oil Company, and constructed all other facilities necessary to produce, gather and transport the gas to Clayton.

The price to be paid by Colorado Interstate to Canadian River for the gas purchased from it was to be the cost to Canadian River of owning, producing, compressing and transporting the gas to the delivery point at Clayton.

Cost was made the basis because it was recognized that profit from the enterprise should go to Colorado Interstate since that company had financed the entire venture, either directly or through purchase of bonds of Canadian River.

After the issuance of all securities, Colorado Interstate then had outstanding \$19,200,000.00 of bonds, 20,000 shares of preferred stock and 1,250,000 shares of common stock. There was no public financing and the bonds were to be amortized over a period of twenty years.

Colorado Interstate was willing to bring gas to Denver as a private business venture and invest this money on the

basis of the contractual obligations assumed; provided there was a reasonable expectation that at the end of the twenty-year period the company would have been able to recover back all of the money invested with adequate earnings for that entire period.

The contracts for the sale of gas to Public Service Company and others were made upon this basis. The construction of this project was begun and the expenditures necessary were made only after the investigation report of Mr. King and the approval of the forty cent per mcf gate rate by him, and, after the approval by the City of Denver in the ordinance of September 14, 1927, of the King report and the forty cent rate.

Colorado Interstate relied upon this action by the City of Denver and the contract with Public Service Company was entered into only after such action by the City and in reliance thereon.

Except for the approval by the City of Denver and the subsequent contract with Public Service Company, the project would not have been undertaken and the money would not have been expended.

While the contract with Public Service Company was the principal one making this project feasible, of equal importance was the sale of gas to Colorado Fuel & Iron Company at Pueblo.

In addition to the contract with Public Service Company, we made a few contracts for the sale of much smaller quantities of gas to one municipally-owned plant and to other distributing companies serving other communities in Colorado.

These were private contracts, separately negotiated; and were made in order to assure the return of the capital investment so far as possible.

These contracts were with Pueblo Gas & Fuel Company, Arkansas Valley Natural Gas Company, Colorado-Wyoming Gas Company, Public Utilities Consolidated Corporation—now known as Citizens Utilities Company—and the City of Colorado Springs.

None of these contracts would have been possible except for the contract with Public Service Company for Denver.

Q. Mr. Payne, you referred to a proposal which was made by the Colorado Interstate to the Public Service Company of Colorado by letter under date of June 8, 1927.

I am going to hand you Exhibit 4 and ask you if that is a copy of that letter of proposal, Exhibit 4 being the exhibit of that number that has already been introduced in evidence.

A. Yes, that is a copy.

Q. All right, sir. You mentioned that you were in charge of the natural gas interests of the Standard until July 1, 1933; did you continue your connection with the Standard Company from that date until the date of the retirement which you have already described?

A. Yes.

Q. Who succeeded you in charge of the natural gas department after July 1, 1933?

A. Mr. Ralph W. Gallagher.

Mr. Dougherty: That is all the direct examination.

The Trial Examiner: The hearing will stand recessed for five minutes.

(Whereupon a short recess was taken.)

The Trial Examiner: We will come to order, gentlemen.

Mr. March: If it please the Examiner, we can prevent a great deal of unnecessary cross examination here by incorporating into this record the cross examination and examination of Mr. Payne before the Federal Trade Commission, involving certain matters involving the organization of the Colorado Interstate Gas Company and the financing of that company.

This testimony is found in Senate Document No. 92, Part 83, Seventieth Congress, first session. It is entitled "Utility Corporation's letter from the Chairman of Federal Trade Commission Transmitting in Response to Senate Resolution No. 83, Seventieth Congress, A Monthly Report

on the Electric Power and Gas Utilities Inquiry. Filed with the Secretary of the Senate, December 15, 1935."

Now, if it is agreeable to counsel, opposing counsel, we would like to offer in evidence the portions of this testimony of Mr. Payne which I will designate, and I now offer to be marked for identification, Federal Trade Commission, Volume No. 83.

I hand opposing counsel a copy. I wish to have it designated as Exhibit No.—what is the next exhibit number?

The Trial Examiner: 10 is the next exhibit.

Mr. March: Exhibit No. 10.

(The document referred to was marked for identification as "Exhibit No. 10.")

Mr. March: I wish to offer specifically from this record, testimony of Mr. Payne found on the following pages: Page 195 to 202.

Mr. Dougherty: * Inclusive?

Mr. March: Inclusive.

Page 212 to 228, inclusive, and page 246 and 249.

The Trial Examiner: 246 to 249?

Mr. March: Yes, that is right.

The Trial Examiner: Inclusive?

Mr. March: Two pages there, the last designation, 246 and 249.

Mr. Dougherty: 246 and 249?

Mr. March: That is right.

That is my offer: Now, as to the relevancy of this, Mr. Examiner, this, as I stated, involves testimony relative to the organization of the Colorado Interstate Gas Company, certain transactions relative to the financing of that company, and the expenditure of some four hundred and some odd thousand dollars to secure the right of way into Denver—not the right of way, but the franchise rights and the service into Denver, Colorado, and Colorado Springs.

Also, page 246 and 249, that portion of the testimony chiefly involves testimony relative to the relationship between Standard Oil and Ford, Bacon & Davis, Incorporated, which was a company which constructed the pipe line for Colorado Interstate Gas Company, and was a service company for a period of years—I should say, operated the companies for a period of years.

Mr. Dougherty: We have no objection to it, designated from this volume as part of the examination of Mr. Payne in this proceeding.

Mr. March: May it please the Examiner, I offer these in evidence at this time.

The Trial Examiner: I believe you have made an offer prior to this.

Mr. March: I have marked them for identification. I now wish to offer this in evidence.

The Trial Examiner: I think the Examiner explained, Mr. March, that no ruling will be made by the Examiner at this time on the offer of evidence. Ruling will be made at the time the hearing is convened in Denver.

Mr. March: Well, this is in lieu, you understand, of our cross examination, a large portion of our cross examination of Mr. Payne on this deposition.

It is really a part of this deposition, so I see no reason why the Examiner should not rule on this at this time.

The Trial Examiner: As I understand, Mr. Dougherty raises no objection to the offer made by Commission's counsel; however, the Examiner, at this time, does not feel that he is in a position to rule on these matters before the official designation of the Examiner to preside at these hearings has been made.

Mr. March: That is all right, Mr. Examiner. We will only ask a few questions.

Mr. Dougherty: I am in doubt as to 247 and 248. I don't know whether you said 246 to and including 249.

Mr. March: It is 246 to 249, pardon me.

Mr. Dougherty: You include 247 and 248? That is that I wasn't clear on.

The Trial Examiner: Do you include 247 and 248, Mr. March? I understand—

Mr. March: Yes, sir, I am including those two pages, yes, sir. I am including them. It is from page 246 to 249, inclusive.

Mr. Dougherty: Now, I understand it is only the pages designated in this volume that are being—

Mr. March: That is right. Just those specific pages. That is all.

Shall I continue, Mr. Examiner?

The Trial Examiner: You may continue, Mr. March.

Cross Examination.

By Mr. March:

Q. Mr. Payne, how many years did you work for the Standard Oil Company?

A. Forty.

Q. That was the Standard Oil Company (New Jersey)?

A. Standard Oil Company, New Jersey, and its subsidiaries.

Q. By whom were you employed?

A. I was not a direct employe of the Standard Oil Company (New Jersey) until June, 1927, when I became a director. During the prior employment, it was with subsidiaries.

Q. What subsidiaries?

A. A number of natural gas companies operating in Ohio, Pennsylvania and West Virginia and some later enterprises—Louisiana.

Q. You don't recall their names, do you?

A. Interstate Natural Gas Company and this Denver project involved in this case and a company operating from northern Pennsylvania north into New York State.

There were some twelve or fifteen companies.

Q. Were you ever employed directly by any members of the Rockefeller family?

A. No.

Q. They had nothing to do with employing you?

A. They had nothing to do with my employment.

Q. Did you work under their supervision?

A. Never had any supervision from any of the Rockefellers.

Q. In 1927, the Colorado Interstate Gas Company was organized, as I understand; on that date, who was your immediate superior?

A. I was elected a director of the Standard Oil Company in June, 1927. I was a member of the Board of Directors at that time.

Q. You were, likewise, an officer, were you not?

A. I was not an officer at that time, no. The president of the company was Mr. Walter C. Teagle was either president or Chairman or Mr. A. C. Bedford was Chairman or president. Those two offices were held by those two men.

Q. You drew your salary from the Standard Oil Company (New Jersey)?

A. No, I drew a portion of it. The balance was paid by the natural gas companies of which I was an officer.

Q. That was in 1927?

A. That is right. That was the first time the Standard Oil Company had paid me was when I was elected a director in June 1927.

Q. Prior to that time you had received compensation from the subsidiary companies?

A. From the subsidiary companies.

Q. To whom did you feel that you were responsible to report? Who did you consider your superior in the organization?

A. Well, of course, my position was sort of a liaison officer between these subsidiaries and the Board of the Standard Oil Company, and I frequently talked with Mr. Hunt, the Treasurer of the Standard Oil Company, and Mr. Teagle, Mr. Jones, vice president, Mr. Bedford.

Q. Who directed your activities in the organization of the Colorado Interstate Gas Company?

A. Well, my conferences were chiefly with Mr. George H. Jones until he died in November 1928—I believe I have made a mistake—I believe George H. Jones was Chairman.

of the Board, and Mr. Bedford died about or just prior to this time.

Mr. Teagle was president and Mr. Jones was Chairman of the Board. My conferences were usually with George H. Jones.

Q. You were in complete charge of the organization of Colorado Interstate Gas Company, so far as Standard Oil Company (N. J.) was concerned?

A. I was its representative, yes.

Q. Who was the representative of Southwestern Development Company?

A. The Southwestern Development Company was represented by W. S. Fitzpatrick, Nelson Moody and A. R. Jones of Kansas City.

Q. Who did you negotiate with, with these three individuals?

A. With those three gentlemen?

Q. Yes.

A. Mostly with Mr. Fitzpatrick.

Q. Who did Mr. Fitzpatrick represent? Did he represent the Standard Oil interests?

A. No. Mr. Fitzpatrick never had any employment with the Standard Oil Company (New Jersey).

Q. (N. J.)?

A. That is right.

Q. He might have had some connection with the Standard Oil Company (New Jersey) though?

A. No connection whatever.

Q. Do you know that he was not connected in any way?

A. I know that he was not connected in any way.

Q. Do you know that he was not connected in any way with the Rockefeller family?

A. I don't think he was connected with the Rockefeller family in any respect.

Q. What leads you to believe that?

A. Well, he was an officer of Prairie Oil & Gas Company, and I think the Prairie Pipeline Company, and that was his business, and his activity was with those companies.

Q. This Prairie Oil & Gas Company—you wouldn't say the Rockefellers didn't have any interest in that, would you?

A. I am not sure whether Mr. Rockefeller, Sr., had any stock in that company at this time or not. He had disposed of all of his stock in the Standard Oil (New Jersey) at this time.

He had conveyed it to those foundations, charitable organizations.

Q. Since you mention that, these charitable organizations which have been set up by Senior Rockefeller, those organizations held substantial stock in the Standard Oil (New Jersey) in 1927, did they not?

A. I think they had quite a few shares, yes.

Q. Probably the largest block of stock; common stock?

A. Well, Mr. March, there are three or four of those foundations. If you are grouping them all together, they might have had quite a block.

Q. When you were a director of the Standard Oil Company (New Jersey), did you ever see the stockholders list?

A. Oh, I have, yes, many times.

Q. You can state that the Rockefellers had a substantial stock interest? When I say "the Rockefellers," I mean these foundations and charitable institutions and other trusts set up by Senior Rockefeller, had a substantial interest in the Standard Oil Company (New Jersey).

A. I think that is a correct statement.

Q. And you are not prepared to state that they had a substantial interest in Prairie Oil & Gas Company?

A. What I say is, I don't know whether the foundations, the charity foundations, had received stock from Mr. Rockefeller or whether Mr. Rockefeller owned stock, but, as I understand it, after the dissolution which occurred in 1911, there were many changes in the ownership of the stock of the individual companies.

Some of them, the Rockefellers held substantial interests, and others they sold their interest and I am not aware of the facts.

Q. In other words, you wouldn't be prepared to say one way or the other, whether or not the Rockefellers had any interest whatsoever in Prairie Oil & Gas Company from 1927 on to your retirement?

A. I couldn't say; truly, I couldn't say.

Q. You have no knowledge?

A. No.

Q. What was the relationship between the organization of Colorado Interstate Gas Company and Canadian River Gas Company?

A. Only one of contract.

Q. Just of contract?

A. That is all.

Q. Do you know, in 1927, what company was the the largest stockholder in the Southwestern Development which controlled the Canadian River Gas Company?

A. I think what I call the Bert Jones Company, the Mission Company, of Kansas City, owned 49 per cent and the 51 per cent was owned by the Producers & Refiners Corporation.

Q. Producers & Refiners Corporation?

A. Yes.

Q. And—

A. (Interposing) May I add that I think the Prairie Oil & Gas Company controlled the Producers & Refiners Corporation?

Q. That is satisfactory.

A. I don't know what proportion they owned.

Q. They controlled it?

A. Yes.

Q. Mr. Payne, in regard to Exhibit No. 4, I note that this original tender of offer, that is, the proposal of June 8, 1927, by Canadian River Gas Company and Colorado Interstate Gas Company, to Public Service Company of Colorado for the sale of gas to Denver, was made on the stationery of the Prairie Oil & Gas Company and the name of W. S. Fitzpatrick appears as Chairman of the Board of Directors of Prairie Oil & Gas Company.

Can you tell me why that offer was made in that form? It was not made to the Prairie Oil & Gas Company, of course.

A. It was made by Mr. Fitzpatrick, Chairman of the Board of Directors, oh, for dignity, I guess. I don't know any other reason.

Q. You wouldn't say that it was made because Prairie Oil & Gas Company represented pretty well common inter-

A. No, I think it was simply, "you sign it or I sign it."

Q. I believe Mr. Fitzpatrick was Chairman of the Board while you were president and director of the Colorado Interstate Gas Company, was he not?

A. That is right.

Q. Now, Mr. Payne, when you became an officer of the Colorado Interstate Gas Company, did you draw a salary from that company?

A. I think that a portion of my time was charged to the Colorado Interstate Gas Company and paid by that company, yes, that is correct.

Mr. Moody and Mr. Fitzpatrick did not draw any salary from the Colorado Interstate Gas Company.

Q. Where did they draw their salaries from?

A. They were both employees of the Prairie Oil & Gas Company.

Q. How many members of your office were officers or directors, originally, of the Colorado Interstate Gas Company? Can you enumerate them?

A. Oh, I think Mr. R. W. Gallagher, Mr. H. C. Cooper, Mr. John B. Luse, and myself. I think there were four members. No, I think there were only three members, Mr. Gallagher, Mr. Cooper and myself.

Q. Three officers?

A. Three directors.

Q. Was the staff of the company recruited from your office pretty well at the beginning?

A. Yes, from my office or from the operating staff of subsidiaries—Pittsburgh and Cleveland.

Q. Do you recall how many members of the Board of Directors there were originally for the Colorado Interstate Gas Company?

A. Seven.

Q. Seven?

A. Yes, sir.

Q. And you had three out of seven?

A. Three out of seven.

Q. While we are on that, you mentioned Mr. Gallagher. I am interested in Mr. Herbert R. Gallagher. Who was he?

A. He had nothing to do with any of these enterprises.

I think he was associated with the Consolidated Oil Company.

Q. He had no connection with you?

A. That is the Sinclair—known as the Sinclair Oil Company.

Q. He had nothing to do with you?

A. Not at the time we are talking about—during the organization and commencement of this project. Later, as a member of the Consolidated Oil Company corporation he may have had some interest when that company succeeded the Prairie in owning the Southwestern stock.

Now, that is rather indefinite, isn't it, but so long as I had anything to do with the Colorado Interstate Gas Company, Herbert Gallagher had nothing to do with it, no relation whatever.

The fact I am talking about occurred in more recent years.

Q. Now, I want to ask you—I note here in your written statement—I will read it—it is on page 7. You just read it in the record.

I note the following statement: "Financing of the cost of this enterprise was done through the issuance of \$19,200,000 bonds of Colorado Interstate, substantially all of which were acquired by Standard Oil Company, and the remainder being purchased by an individual."

I want to know who that individual was?

A. I think that was John D. Rockefeller, Jr.

Q. You say you think. Do you know if is John D. Rockefeller, Jr.?

A. Well, the subscription came through his office, through his representative—I think it was John D. Rockefeller, Jr.

Q. That subscription—who contacted you in regard to that subscription?

A. I think I went to see Mr. Rockefeller's head man who had an office at 26 Broadway, and I think Mr. S. B. Hunt, who was then a treasurer of the Standard Oil Company, went with me.

Q. He was the head man, Rockefeller's main man?

A. Did you ask his name?

Q. You say Mr. Hunt?

A. No, Mr. Hunt was treasurer of the Standard Oil Company.

Q. But whom did you go to?

A. We went to see Mr. Cutler?

Q. Cutler?

A. Cutler.

Q. His full name is Bernard—

A. (interposing) No; Bertram G. isn't it?

Q. Bertram G.?

A. Bertram G. Cutler, I believe.

The Trial Examiner: Is it Cutlet?

The Witness: C-u-t-l-e-r.

The Trial Examiner: Oh, Cutler.

By Mr. March:

Q. Who told you to go and see him?

A. I think Mr. Hunt said we had better see if Mr. Cutler wouldn't like to buy some of the bonds of this company.

Q. You never made any reports to Mr. Cutler in any way?

A. What is that question?

Q. I say, you never made any reports to Mr. Cutler?

A. No.

Q. You never reported to him at all about your negotiations and dealings with Colorado Interstate?

A. No, not at all.

Q. Your main reports were made to the Chairman of the Board of Directors?

A. That is correct.

Q. That was Mr. Jones?

A. That was Mr. George H. Jones.

Q. Now, I want to ask you a question about the Colorado Fuel & Iron Company?

I believe it was necessary, as I understand it, for you to secure the business of Colorado Fuel & Iron Company, before this project could be economically feasible?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. As I understand it, you were in a position to secure that business?

A. We probably had a better access to that company than any other natural gas operator, yes, sir.

Q. That was due to the fact that the Rockefellers had substantial stockholdings in Colorado Fuel & Iron Company?

A. I think Mr. John D. Rockefeller, Jr., did, yes, sir, and he gave us the—his office gave us the letters of introduction to the officials of the Colorado Fuel & Iron.

Q. Do you recall who in his office gave you the letters of introduction?

A. I think it was Mr. Cutler.

Q. I want to ask you a question about—you will pardon me if I seem to be skipping around here, Mr. Payne, but I am just supplementing some of the matters already in evidence in this Federal Trade Commission report—I mean it has been tendered.

I want to ask you a question about the relationship between Ford, Bacon & Davis, Incorporated, and Standard Oil Company (N. J.) What was the corporate relationship between the Standard Oil Company (N. J.) and Ford, Bacon & Davis?

A. There was no corporate relationship. That is to say, the Standard owned no stock in Ford, Bacon & Davis and Ford, Bacon & Davis was not interested in Standard Oil Company.

Q. You are positive of that?

A. I am positive of that, yes, sir.

Q. You examined the stockholders list of Ford, Bacon & Davis?

A. No, but I know that the Standard Oil Company owns no stock in Ford, Bacon & Davis, Incorporated, and I am quite equally sure that the firm of engineers had no stock of the Standard Oil Company. They had other uses for their capital.

Q. Do you know whether or not any members of the Rockefeller family, or any trusts that you set up during the period you were connected with the Standard Oil Company (N. J.) had any interest in Ford, Bacon & Davis, Incorporated?

A. I am sure there was no relationship between any of these interests. Ford, Bacon & Davis was entirely owned by the engineers who carried on the business of the firm. It was just an engineering firm like any other nationally known engineering firm.

Q. Who did you understand to be in control of Ford, Bacon & Davis—what person?

A. Well, George W. Bacon, I think, was president; then his partners—it was originally a partnership; when that was incorporated there were Messrs. Von Plüch, Uebelacher, Rhodes, Hill and Black—there were two Blacks, one in charge of the California office and one in charge of the New Orleans office. Those were the men who constituted Ford, Bacon & Davis, and owned the company.

Q. None of these men were ever connected in any way, directly or indirectly, with Standard Oil Company (N. J.)?

A. None of them.

Q. But you have not seen the stockholders list and you did not see the stockholders list of Ford, Bacon & Davis, Incorporated?

A. No, I never did.

Q. So you would not be prepared to say as to whether or not the members of the Rockefeller family, or voting trusts set up by them, held substantial stocks of Ford, Bacon & Davis?

A. I am sure of that, because I talked with members of Ford, Bacon & Davis and I knew the constitution of their organization.

Q. That would eliminate any possibility of the Rockefellers owning that stock?

A. I am sure of that.

Q. As I understand it, Ford, Bacon & Davis did practically all of the gas engineering work for the Standard Oil Company (N. J.).

A. I will tell you how our connection with them took place. While I was in Pittsburgh, working for the Peoples Natural Gas Company, I overheard Mr. Uebelacher testify for the Philadelphia Gas Company and I was so impressed with his testimony and his ability to handle himself in matters of that kind that when we had our first rate case I wanted Mr. Uebelacher of Ford, Bacon & Davis to represent us. That was the beginning of our relationship with Ford, Bacon & Davis.

Q. What year was that?

A. Oh, that was somewhere in 1919 or 1918.

Q. And you were responsible for the employment

A. (Interposing) I think so originally, yes.

Q. And they were your exclusive engineers?

A. They were not our exclusive engineers.

(Vol. IV., pp. 506-538.)

In April, 1927, there was payment to Cities Service Company of \$26,750.00 by the Colorado Interstate Gas Company for services of its engineers and employees in connection with the rate ordinance and other matters, together with \$1750.00 interest, which is included in the \$26,750.00.

Now, what I want to ask you: Do you recall that transaction, Mr. Payne?

A. Yes.

Q. Now, what I want to ask you is what those engineers did.

A. Mr. March, in 1926, the parties promoting this enterprise agreed that if any of the parties advanced money to further the enterprise prior to the time when the corporation might be completed and the financial set-up arranged, they should be reimbursed their advances plus 6 per cent interest, and what you are referring to is the payment made to Cities Service Company for work done in advance of the final set-up of the project.

(Vol. IV., pp. 542.)

Mr. Lange: I have one or two questions to ask Mr. Payne.

By Mr. Lange:

Q. Mr. Payne, I understand that you are connected with the enterprise of bringing gas from the Amarillo field to Denver from its inception. You stated in your—you made the statement in this statement in the record that you were connected with the original negotiations in 1927, isn't that correct?

A. And '26.

Q. And '26?

A. Yes.

Q. Even as far back as 1926?

A. Yes.

Q. When the project was first discussed?

A. Yes.

Q. At that time, artificial gas was being served in Denver?

A. Yes.

Q. In the City of Denver?

A. Yes.

Q. Who distributed that gas in Denver?

A. Public Service Company of Colorado.

Q. And was there artificial gas being distributed in Colorado Springs?

A. Yes.

Q. Who distributed it there?

A. I think a municipally owned plant. What do they call that?—Colorado Springs Municipal Gas Plant or some such name as that. It was municipally owned.

Q. And was there also artificial gas being distributed in Pueblo, Colorado?

A. Distributed by the Pueblo Gas & Fuel Company.

Q. Pueblo Gas & Fuel Company?

A. Yes.

Q. And when this projected enterprise was discussed, it was contemplated, of course, to substitute natural gas for the artificial gas, wasn't it?

A. Yes.

Q. And I believe you make the reference at the end of your statement to the effect that, principally, because of the proposed delivery of natural gas for distribution in Denver, that the project was finally constructed, that if you hadn't had the contract with Public Service Company of Colorado for distribution at Denver, the project would not have been constructed?

A. That is correct. There were two essential customers—the City of Denver and the steel plant at Pueblo. Without either one of those, the project wouldn't have been feasible.

Q. And that delivery at Denver was, of course, at the

Denver city gate for distribution in the City of Denver for ultimate public consumption?

A. Yes; certainly.

Q. In other words, domestic, commercial, as well as industrial were to be supplied in the City of Denver?

A. By the distributing company, the Public Service Company of Colorado, yes, sir.

Q. And the same would be followed in Colorado Springs; they were to distribute that natural gas in Colorado Springs, too, after your company had sold it at the city gate?

A. That is correct.

Q. Now, how long after that were other sales made off the line for domestic consumption—for ultimate domestic consumption?

A. Well, I think, within a year, the contract was made for sale of gas to the Arkansas Valley Gas Company.

Q. And where did they distribute?

A. They distributed in Rocky Ford, La Junta, Las Animas.

Q. For domestic and commercial use there?

A. That is right.

Q. Was there any additional contract entered into later for domestic consumption?

A. Well, there was the contract for delivery of gas, wholesale, to the line that went north from Denver toward Cheyenne.

Q. Colorado-Wyoming Gas Company?

A. Colorado-Wyoming Gas Company, that is correct.

Q. And with the ultimate object in view of that company either distributing that gas, itself, or selling it to distributing companies who would, in turn, distribute to the public?

A. I think that is the statement of the situation, yes, sir.

Q. And when the line was subsequently built, the transmission line from the Amarillo field to Denver, natural gas was transported through it and sold at the various gates along the line to these several distributing companies for distribution?

A. That is correct.

By Mr. March:

Q. Just one other question I have in mind. Did you

ever hold any stock in the Standard Oil Company (New Jersey)?

A. What is that question?

Q. Did you ever, personally, own any stock in the Standard Oil Company (New Jersey)?

A. Yes. Most of what I have was secured through what they call the employees' stock plan.

Q. Is that common stock?

A. That is common stock, yes. The employees pay so much a month into this plan and the company puts in a contribution.

Q. You say that was a substantial amount of stock?

A. No. I would say not substantial. I wish it was more substantial than it is.

Q. Under 10,000 shares?

A. Under 2000 shares.

Q. Under 2000 shares?

A. Oh, yes.

Q. You said you were elected to the Board of Directors of the Standard Oil Company (New Jersey).

A. The parent company.

Q. The parent, New Jersey, that is right. In 1927?

A. 1927.

Q. Just shortly before the negotiations relative to organization of Colorado Interstate Gas Company?

A. Well, it was during the negotiations which began in 1926.

Q. What stock interest did you represent on the Board?

A. I was there merely because of my experience in natural gas operation.

Q. Yes, I know, but they had an election and elected you as a member of the Board of Directors. What stockholders were responsible for electing you?

A. I couldn't tell you that. There were none directly responsible for me or back of me.

Q. Who contacted you relative to being a director?

A. The officers of the company, members of the Board of Directors.

Q. Mr. Jones?

A. They manage the company.

Q. In other words, the company was managed—had a self-perpetuating Board of Directors?

A. No. Of course, they are elected annually and I suppose I was asked to be a director by the fellow members of the Board and then proxies were secured from the stockholders generally and a sufficient ~~majority~~ secured to elect this Board.

Q. Yes. In other words, you were elected on the recommendation of the management?

A. That is correct.

Q. Whom did you consider the management to be?

A. The Board of Directors of the Standard Oil Company managed the company solely.

Q. Where were the offices of Colorado Interstate Gas Company?

A. In New York and Colorado Springs.

Q. And where were the offices of Canadian River Gas Company?

A. Canadian River Gas Company?

Q. Were they in the same—

A. (Interposing) Independence, Kansas.

Q. They weren't in the same building that Colorado Interstate Gas Company was?

A. No. Independence, Kansas.

Q. In whose offices were the offices of Colorado Interstate Gas Company housed?

A. Together with all the other natural gas companies. We rented space from the owners of the building.

Q. They were housed right there with the rest of the Standard crowd?

A. That is right.

Q. Was the Prairie Oil & Gas Company housed in the same building?

A. No.

Q. Was the Southwestern Development Company housed in the same building?

A. No, the offices of those last two companies were in Independence.

Mr. March: That is all.

Mr. Lange: No further questions.

(Vol. IV., pp. 543-549.)

Q. With respect to your election to the Board of Directors, did you consider that you represented all the stockholders after you were elected?

A. I never represented any block of stockholders or any pressure group, no. I represented all the stockholders.

Q. As a matter of fact, Mr. Payne, at that time, and for a number of years preceding thereto, did not the Board of Directors of Standard Oil Company (N. J.) consist of men who devoted all their time either to the affairs of that company or its subsidiaries?

A. All of the directors of the company during my knowledge of Standard Oil Company have been specialists in some line of the company's work.

Q. And devoted all—

A. (Interposing) And active in the employment in that work, yes.

Q. And they—

A. (Interposing) They are not bankers or outside capitalists. They are all men active in the specific work of the company.

Q. And, generally, is it not so that they reached a position of a director after a number of years of service in lower capacities?

A. That has always been the case.

Q. In various fields?

A. That has always been the case.

Mr. Dougherty: That is all the questions I have to ask, Mr. Payne.

The Witness: Could I change my answer? It has always been the case in my memory.

Mr. Dougherty: That is all I have to ask, Mr. Payne.

I would like to introduce in evidence from Exhibit 10, which has already been offered by counsel for the Commission, the testimony of Arthur K. Lee, which relates to the question of the acquisition of rights to Colorado Springs.

That testimony commences right at the bottom of page 359 and continues down a little better than half-way of page 372. That bears on some of the questions that Mr. March asked Mr. Payne about payment and some question about the commission about this firm named Dunham & Pratt. It is explanatory of that.

Mr. March: No objection to that offer. May I ask you one final question about Consolidated Oil Corporation?

Recross Examination.

By Mr. March:

Q. As I understand, the property of Prairie Oil & Gas Company were merged into Consolidated Oil Corporation or acquired by Consolidated Oil Corporation?

A. Well, at some time something like that happened. Whether it was a merger or purchase of assets, I don't know.

Q. Do you know anything at all about the stockholders of Consolidated Oil Corporation or, did you know anything at all about the stockholders—

Mr. March: Strike that "did you know."

By Mr. March:

Q. Do you recall anything at all regarding who the stockholders of Consolidated Oil Corporation were from 1932 until your retirement from Standard Oil Company (New Jersey)?

A. Well, one of the companies that went into the Consolidated Oil Company was the Sinclair Oil Company.

Q. Yes, I believe you stated a while ago that Sinclair had a substantial interest in Consolidated Oil Corporation.

A. I assume so.

Q. You assume that?

A. It is common report, yes.

Q. You don't know? You have no first-hand knowledge?

A. No, I have no first-hand knowledge. It is common report.

Q. Do you have any first-hand knowledge as to who any of the other stockholders were?

A. No, I have no knowledge as to that.

Q. Then, one final question here: Would you say that, as a general rule during your service as a Director of Standard Oil Company (N. J.), that you observed that most, if not all, of the Directors of Standard Oil Company (N. J.) were on the payroll of that company or they were employees of the company in some capacity, or subsidiaries of the company?

A. That is true. They were employees, had their regular positions and activities and were paid. I believe there is one man named Jennings who had been active as an employee, but was kept on as a Director one or two years after his retirement. I think that is the only exception.

(Vol. IV.; pp. 553-554-A.)

CHRISTY PAYNE, a witness called by Colorado Interstate Gas Company, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Dougherty:

Q. Mr. Payne, you are the same Christy Payne who testified in depositions in this proceeding on October 22, 1940, here in Washington?

A. Yes.

Q. And I believe you there gave testimony concerning the formation and origin of this natural gas project involved in the Canadian River Gas Company and Colorado Interstate Company?

A. Yes.

Q. Directing your attention specifically to the leases and wells, that were originally acquired by Canadian River Gas Company from Amarillo Oil Company, will you tell us the narrative as to how the price of \$5,000,000.00 was arrived at in the early negotiations that took place and which led up to the making of this project agreement in April, 1927, which has been introduced as Exhibit 1 in this case?

A. I will have to begin with the time when my attention was first called to this Amarillo Gas Field.

Q. I might say, Mr. Payne, you do not need to limit yourself too closely to that. Give us such additional facts as are necessary for a complete background of the story.

A. Early in June, 1926, Mr. Teagle came back from an oil meeting in Tulsa and suggested to me that I look up the facts with respect to the Amarillo Gas Field, that he had talked about that field with Mr. Fitzpatrick when he was out there.

Later in the same month, Mr. Fitzpatrick came to my office in New York. He had been talking with Mr. Teagle and I believe their conclusion had been that if the field justified it and there was a market, the Standard Oil Company would be invited to participate on a fifty-fifty basis with Mr. Fitzpatrick's Company, the Southwestern Development Company.

It was suggested that I send men out to investigate the Amarillo field and the possible markets so it was arranged that Mr. H. C. Cooper, our chief engineer in Pittsburg and Mr. R. W. Gallagher who was president of East Ohio Gas Company and Ralph E. Davis, an appraisal gas engineer, should go to Amarillo, to investigate the field there and the possible markets and make a report. These men went out about the first of July, 1926 and in a week or ten days they returned with reports, both of the condition of the field, the wells and production and an investigation of potential markets. They eliminated the Kansas City Market and felt that a line up through Colorado to Denver was a feasible project.

These reports were then shown to Mr. Fitzpatrick in July and with Mr. Fitzpatrick, Mr. N. K. Moody and Mr. A. R. Jones came to New York to discuss what then might be done. Mr. Jones was president of the Mission Oil Company, which owned 49% of the Southwestern Development Company.

Our first approach to the project, after concluding that it was a feasible project, was that the new project would buy all of the properties of the Amarillo Oil Company, the Panhandle Pipe Line Company which was a connecting link between the field and Amarillo and the gas distributing plant of the Amarillo Gas Company in Amarillo.

As I recall, we made a proposition for the purchase of all those properties and it was given consideration by these three men. That proposition was rejected. The reason they gave was that they had some plans about selling gas further south in Texas and that the properties in and running to Amarillo were important for that extended project. Then we made a proposition for the purchase of the wells and gas leases.

The first proposition was for the payment of \$1,250,000.00 in cash and the value of stock of \$750,000.00, a total of \$2,000,000.00. This proposition was considered by these men and rejected. Then we proposed a purchase of gas in the field with a 50-50 arrangement as to the ownership of stock. That proposition was rejected as not satisfactory to these men. Their argument was that they had some bonds outstanding and I don't recollect whether they were bonds of the Amarillo Gas Company or the Amarillo Oil Company or the Southwestern Development Company, perhaps bonds and notes of more than one of those companies and they were in default. Their attitude was that they must have a substantial payment in cash for the value of the properties. They had been talking first about \$15,000,000.00 and then \$10,000,000.00 and then \$7,000,000.00 and there was dickering back and forth.

I was away during September and Mr. Gallagher carried on some further negotiations with these men, most of the time with Mr. Moody and Mr. Fitzpatrick, but Mr. Jones came on from Kansas City when there was any real proposition to consider. Mr. Gallagher reached a figure of paying \$4,000,000.00 in cash for the gas leases and wells and in his proposal, as I recall, the Southwestern Development Company was to buy an equal amount of stock—no, in Mr. Gallagher's proposal, the Standard Oil Company was to buy \$2,000,000.00 preferred stock and the common stock was to be divided. I think Mr. Fitzpatrick appealed to Mr. Teagle who was away on an inspection trip along about the first of October and all Mr. Teagle had to suggest was that \$5,000,000.00 in bonds be paid to the Southwestern Development Company and \$1,000,000.00 in cash in addition which the Southwestern Development Company was to use to buy stock in the project. That suggestion did not meet with the approval and was abandoned.

When I returned about the first of October, Mr. Fitzpatrick and Mr. Moody and Mr. Jones came to New York and they then insisted upon a payment of \$5,000,000.00 in cash for the wells and the leases and half of the issue of preferred stock and half of the issue of common stock and for the stock, Southwestern Development Company was to pay nothing. Mr. Gallagher and I realized that that seemed

to be the end of the alley so far as concessions on the part of Southwestern Development Company was concerned and as Mr. Teagle was away, we recommended to Mr. George E. Jones who was chairman of the board of Standard Oil Company this was as far as we could go in our negotiations and in our judgment, it should be accepted and Mr. Jones approved our recommendation.

Q. Then that resulted in the agreement between representatives of Southwestern Development Company and between you and Mr. Gallagher representing the Standard Oil Company of New Jersey, that in this project, there would be the \$5,000,000.00 in cash paid for the leases and wells of the Amarillo Company and, in addition, there would be this stock with an equal interest of Standard Oil Company, I think you said 50%?

A. That is correct. That was in October and that basis remained throughout the rest of the negotiations and the organization.

In the meantime, the corporate forms had to be changed from the setup that we were making because counsel of Standard Oil Company, in conferences with the Humble Oil and Refining Company decided Standard Oil Company could not own any interest in a company which owned property in Texas and that caused the change from our original plan or program.

Q. At the time, however, when these negotiations were carried on, you were thinking in terms of one project?

A. We were thinking in terms of one project.

Q. Now, that started, I believe you said, in June, 1926, and continued through until October of the same year, that series of negotiations?

A. I think the negotiations began after the reports came in in the second week in July and continued until October.

Q. Did you have a number of conferences during that period with representatives of Southwestern Development Company?

A. Many conferences, as I said, before, chiefly with Mr. Moody and Mr. Fitzpatrick but whenever there was a proposition to be seriously considered, they always brought in Mr. Jones from Kansas City.

Q. Now, you started out with your first offer, Mr. Payne, I think you said of about \$1,250,000 with \$750,000.00 in stock. What were the motives or impelling motives or reasons that existed for raising your offer or your proposal until, finally, you agreed on the one that was the basis of the contract?

A. In the reports of the gas reserves made by Mr. Davis and Mr. Gallagher and Mr. Cooper, there was a considerable difference of opinion about the available gas and the acreage. Mr. Davis felt that there were 165,000 acres of proven territory.

Q. That is in the Canadian River area?

A. That is in the Canadian River area then owned by the Amarillo Oil Company in those six counties of the Panhandle field. There weren't many wells drilled in that area some 20 or 21, or 22 wells and from the data available, it was a little difficult to accurately estimate reserves. Mr. Davis thought that the reserves might run as high—

Mr. March: (Interposing) I object to that question unless they bring Mr. Davis up and he testifies. That is just a way of getting the reserve in the record without having the witness here. What Mr. Davis thought is all right if they want to bring him in but they should have brought him in Denver. I object to the question.

Trial Examiner: I think there is some merit to the objection raised by Commission's counsel. If Mr. Payne, Mr. Dougherty, would confine himself more to the history of these transactions rather than endeavor to go into the detail of the estimates made by Mr. Davis—

Mr. Dougherty: (Interposing) Of course, that is a history. I think the witness could say on the basis of estimates made by Mr. Davis he did certain things. That is what we have got here, Mr. Examiner, a contention by the Federal Power Commission that the \$5,000,000.00 paid for these leases or at least that part of it not represented by wells should not be allowed, something like \$3,100,000.00.

Any figure that Mr. Payne would give here as to what Mr. Davis said, I would not urge that be considered as evidence of the fact but merely as the basis upon which he arrived at various dollar figures which were proposed in these negotiations.

Mr. March: I object to the testimony of the amount of reserves Mr. Davis said was there. Mr. Payne was here on the stand when the hearing began. There has been an adequate opportunity for any sort of testimony to be brought in either through Mr. Davis or other witnesses. As I recall, I interrogated many witnesses and attempted to find out the estimate of reserves. I object to reopening that testimony at this time.

Mr. Dougherty: That isn't what I'm doing, Mr. March. When we started off with these depositions, there was no contention on anybody's part, that I knew of then, that the \$5,000,000.00 would not be accepted as the original cost of these leases so there was no reason why I should anticipate some contention of yours and go into it in detail.

Now, since we have had these hearings, you have made those contentions about these leases and, therefore, what I am doing is merely showing the history of the negotiations. I am not, and I again affirm it, I am not trying to put in Mr. Davis' estimates of reserves as having any bearing on what the reserves of this field were or are. In the first place, it was back in 1926 and that is not of any pertinency with respect to the reserves of 1939. I do not care about so many cubic feet per acre but it is a basis of negotiation in arriving at the dollar value.

Trial Examiner: I think if Mr. Payne would answer in the manner suggested by you, Mr. Dougherty, it would not be objectionable.

Mr. Dougherty: The Examiner sees my point. After all, what Ralph Davis said in 1926 is not evidence of what he might say in 1939 or what anybody else might say.

Trial Examiner: I appreciate that. I think Mr. Payne should refrain, at least from giving definite estimates in the manner in which he started out to do and I think perhaps if you will go along with Mr. Dougherty's suggestion, Mr. Payne, it will be perfectly all right.

The Witness: May I say that during the summer of 1926, when estimates by some parties were low and others were high, we came more and more to the conclusion that the field was very much richer than we first thought it was.

Our feeling was that, owing to the amount of gas being wasted through oil wells in adjoining territory in Hutchinson and Carson Counties that you had to take that seriously into consideration in estimating the amount of gas that might ultimately recovered by more wells drilled through the stunner, better acquaintance with conditions there proved to us that the field was more valuable than at first glance which were very conservative at first.

By Mr. Dougherty:

Q. Were you in the position of making a trade with these people as to the dollars that would be paid for these leases and wells which would go into the cost of the project?

A. Certainly. My attitude and the attitude of Mr. Gallagher was that we wanted to make the pipe line project a financial success and an honorable credit. It was our effort, therefore, to buy those leases at the lowest possible figure that went into the project.

On the other hand, Mr. Fitzpatrick and Mr. Moody, while they had an interest in the pipe line project, were particularly and more vitally interested in getting as much cash as possible from the sale of those properties.

Q. Now, at any time during the course of these negotiations, did Mr. Fitzpatrick or Mr. Moody make any reference to the fact that the Rockefeller family and some of the Rockefeller charitable organizations were stockholders in Prairie Oil and Gas Company which had stock interest in Producers and Refiners Corporation which, in turn, had a stock interest in Southwestern Development Company and that because of that stock interest and also the fact that the Rockefeller family and these same charitable organizations had stock interest in the Standard Oil Company, the New Jersey Company, that some consideration should be given to that and that you ought to pay a higher price because of that fact?

A. No, nothing of that kind entered into the negotiations.

Q. Was there any discussion of the fact that the Rockefeller interests were stockholders common to both companies discussed or brought into the negotiations in any way?

A. Those facts were not discussed or brought into the subject.

Q. Did you ever discuss this matter with either Mr. Rockefeller, Senior or Junior prior to the time that Mr. Junior bought the bonds of the company which was later in 1927?

A. There was a discussion at the time the bonds were offered to Mr. Rockefeller, Jr. in 1927. Prior to that, there was only this reference to the project. That was the time I asked Mr. Cutler in John D. Rockefeller, Jr.'s office to give our men a letter of introduction to the Colorado Fuel and Iron Company so that we could learn something about their uses of fuel.

Q. Now, that last time when you saw Mr. Cutler or the one you mentioned last, was that subsequent to the time when this agreement had been reached with Southwestern Development Company's representative at which these leases would be put into the project?

A. No, I think it was some time—I think it was some time in September—no—the later part of August.

Q. That was when you were first wanting to have contacts with the Colorado Fuel and Iron Company.

A. Yes.

Q. In connection with the markets available?

A. At the time we were trying to find out how much gas would be used by the steel plant at Pueblo.

Q. Was there any discussion with Mr. Cutler at any time as to the price at which these leases and wells would be paid for that were to go into the project?

A. No, sir.

Q. And that also is true of Mr. Rockefeller?

A. That is true in the case of Mr. Rockefeller.

Q. Is it a correct statement, Mr. Payne, that in arriving at the price which you did agree upon, that you were doing it from the interest of the proposed natural gas pipe line and that you exercised your best judgment uninfluenced by any of these matters I have just referred to?

A. That is correct.

Q. Now, you have mentioned that as time went on during the summer and more information was available about the character of the field, your estimates as to the quantities of gas underlying the reserves increased. Now, at the

time you made this final agreement of \$5,000,000.00 plus half the stock, was it your judgment then that that was a prudent business agreement to make on behalf of the business interests you represented?

A. I was satisfied it was a very good business deal and that the pipe line should be a profitable project set up on that basis, yes.

Q. And on the basis of the facts as they were then, is it still your judgment that that was a prudent business deal and that the leases and wells were worth what was paid for them?

Mr. March: I object to that question on the grounds there has been no adequate predicate laid here of the witness' knowledge of the value of leases and there was a witness who testified by the name of Wallace who was supposed to be an expert upon the value of leases. This man has not qualified himself as an expert upon that and there has been no adequate foundation laid for it.

Trial Examiner: The objection will be overruled.

Mr. Dougherty: Do you have the question in mind, Mr. Payne? If not, we will have the stenographer read it.

The Witness: Will you repeat it, please?

(Whereupon, the pending question was read by the reporter.)

The Witness: That is still my judgment.

(Vol. CII (4), pp. 15759-15772.)

Q. I think you testified initially when you gave your deposition on October 22, that there was no corporate relationship between Standard Oil (New Jersey) and Ford, Bacon & Davis?

A. No relation whatever except when they were hired as engineers.

Q. I meant no corporate relation.

A. No corporate relation.

(Vol. CII (1) p. 15783.)

By Mr. March:

Q. In all these negotiations relative to the Denver project, I believe you stated that you did not contact but once Mr. Cutler, Mr. Cutler in Mr. Rockefeller's office?

A. No, I said once prior to the issuing of the bonds.

Q. Well now, did you or did you not consult Mr. Cutler directly in regard to the Denver project?

A. I did not.

Q. Well, did you ever consult Mr. Cutler subsequent to the April 5, 1927, agreement, original agreement?

A. Yes. Mr. Seth Hunt, treasurer of Standard Oil Company, and I went to see Mr. Cutler when we were marketing the bonds of the Colorado Interstate Gas Company and offered to that office the opportunity to subscribe for that bond.

Q. That was subsequent to the April 5, 1927, agreement?

A. Yes.

Q. Now, prior to that time, you saw Mr. Cutler once, I believe, about the project, prior to April 5, 1927?

A. Once in 1926 to get a letter of introduction for Mr. Comfort and Mr. Tate and I am just trying to fix the date when, I think, I got another letter of introduction for Mr. Towers to Mr. Welburn, president of Colorado Fuel & Iron Company. That was perhaps sometime early in 1927. That would make two instances.

Q. Now, when you went in to see Mr. Cutler, did you tell him about the project and everything and about the importance of having the C. F. & I. business, the Colorado Fuel & Iron Company's business?

A. Certainly I told him what the project hoped to do in bringing natural gas to Pueblo and Denver, yes.

Q. Did you tell him about your negotiation with Mr. Fitzpatrick?

A. I don't think we discussed Mr. Fitzpatrick at all, no.

Q. You didn't mention Mr. Fitzpatrick?

A. I don't think so.

Q. What made you think that Mr. Cutler could help you in any way with the C. F. & I.?

A. Well, it is common knowledge, Mr. March, that Mr. John D. Rockefeller, Jr., holds securities of the Colorado Fuel & Iron Company.

Q. As a matter of fact, you knew at that time he held a majority of the securities of Colorado Fuel & Iron, didn't you?

A. I do not know that. I think he had a large holding of bonds. I am not sure whether he had the majority of stock or not. I do not know anything about that.

Q. You understood, though, that he had such an influence over the control of the company that it was most important that you get letters of introduction from Mr. Rockefeller before you contacted people at the C. F. & I.?

A. I think we could probably have gotten a letter of introduction or access some other way but that way was a very persuasive one for a nice reception.

Q. Yes. You mean by persuasive, of course, when a man has a large block of stock in a company, he can always persuade directors to do what he likes in such matters, is that what you have in mind?

A. Well, I don't want to quibble with you about it. I can imagine stockholders having difficulties with their board of directors but usually, a board of directors, knowing that an election is occurring in another year, probably would like to do what the stockholders desire.

Q. Do you know that Mr. Cutler sits on the board of directors of C. F. & I.?

A. I don't know.

Q. Was Mr. Cutler very favorably impressed with your project?

A. I don't think he had any judgment on it until the contracts were made and the bonds ready to sell and then he was very much interested in it and wanted to know something about it.

Q. Wanted to know something about it?

A. Yes.

Q. How do you know he didn't know something about it prior to the time—

A. (Interposing) I mean at the time the bonds were offered to him, we had to give him some sort of a prospectus of what the company was going to do.

Q. How do you know he wasn't familiar with the negotiations all along?

A. I don't know how he possibly could have been familiar with them.

Q. You do not?

A. I do not.

Trial Examiner: The hearing will stand in recess for five minutes.

(Whereupon, a recess was taken after which the hearing was resumed.)

Trial Examiner: The hearing will be in order.

By Mr. March:

Q. You say your superior in these negotiations was George H. Davis?

A. What was that question?

Q. Pardon me, George H. Jones?

A. No, I did not say that.

Q. Who was your immediate superior?

A. These negotiations were in the hands of Mr. Gallagher and myself.

Q. I know, but to whom did you report?

A. We made our recommendations then to Mr. George H. Jones who was chairman of the board of the Standard Oil Company.

Q. Then he was your immediate superior in these negotiations, George H. Jones was?

A. Naturally, we had to refer our recommendations to the board of directors of the Standard Oil Company, New Jersey. Mr. Jones was chairman of that board and very much interested in its affairs.

Q. You consulted Mr. Jones rather frequently in regard to these negotiations, did you?

A. No, we did not.

Q. Did you consult him in regard to these negotiations?

A. I remember the one instance which I have already related but otherwise, I do not recall any frequent or any other references to Mr. Jones.

Q. You just saw Mr. Jones one time before this contract, this tripartite agreement of April 5, 1927, was consummated?

A. I was not a director of Standard Oil Company until July, 1927. Prior to that time, I did not see Mr. Jones very often.

Q. Very often, but you saw him now ~~and~~ then in regard to these negotiations, did you not?

A. Not especially with regard to these negotiations.

Q. He is the man who instructed you to enter into the negotiations, wasn't he?

A. No.

Q. Who was the man who instructed you to enter into the negotiations relative to this April 5, 1927, agreement?

A. You remember I said Mr. Teagle referred the matter to me.

Q. And Mr. Teagle was the man you carried on your instructions with from day to day?

A. I saw Mr. Teagle very rarely and had no discussions with him with respect to these negotiations.

I think when I was away in September of 1926 Mr. Gallagher saw Mr. Teagle several times, but our organization was such that on the natural gas matter neither Mr. Teagle nor Mr. Jones would interfere with the negotiations carried on by the heads of the departments.

Q. However, they had to give you an O. K. to the consummation of the negotiations and to the institution of the negotiations?

A. Especially an O. K. where any expenditure of money was involved, certainly.

Q. There was certainly quite a few thousand dollars involved here, was there not?

A. Certainly.

Q. So Mr. Jones and Mr. Teagle authorized the negotiations and authorized the approval of the final consummation agreement of April 5, 1927?

A. I think I have already said that Mr. Teagle instituted the matter with me and that Mr. Jones gave the final approval on our recommendation.

Q. How do you know that Mr. Teagle did not consult frequently Mr. Cutler in Mr. Rockefeller's office?

A. Mr. Teagle was a very busy man on oil matters, he did not pay much attention to natural gas.

Q. Do you know that he never discussed these matters in regard to the authorization, that he had entered into these negotiations with Mr. Cutler?

A. I do not think he had two words with Mr. Cutler in this matter.

Q. Did he tell you he did or did not?

A. No.

Q. Did Mr. Cutler tell you he did not?

A. No.

Q. Did anyone tell you that he did not?

A. No.

Q. How do you know that he did not?

A. Just because I know how the business was operated, how your organization functioned.

Q. Teagle was the oil man?

A. Yes.

Q. He was the man who handled the oil affairs of the company?

A. Yes.

Q. You say he was a man who was in a superior position in the company, I mean in a high position. I believe you say that he occupied a high position.

A. He certainly did.

Q. Was he directly responsible for the gas end of the business?

A. No, he had very little contact with natural gas; not particularly interested in it.

Q. As a matter of fact, up to this time, had there been any gas that went into the business?

A. Well, we had about \$2,000,000 worth of property, or \$250,000,000 worth of property invested in natural gas.

Q. Did you have any natural gas pipe lines?

A. Yes, many of them.

Q. George H. Jones, how do you know George H. Jones did not consult with Cutler in regard to this project and secure Mr. Cutler's O. K. upon the institution of the negotiations?

A. I am quite sure Mr. Jones never talked to Mr. Cutler about this proposition.

Q. Did Mr. Jones tell you he did not?

A. No.

Q. Did Mr. Cutler tell you he did not talk to Mr. Jones?

A. No.

Q. Did you find out in any way positively that they did not consult in regard to this matter?

A. No.

Q. Cutler and Jones?

A. No.

Q. Now you say Fitzpatrick was the man on the other side of the table representing the Southwestern Development Company.

A. I said Fitzpatrick and Moody.

Q. Fitzpatrick took leadership in these negotiations, did he not?

A. Mr. Fitzpatrick was a kind of executive who never bothered much with papers or statistics or maps or data, and Mr. Moody was the man that handled maps and papers and oil records, was familiar with the field, the properties, and did a great deal of negotiation.

Q. However, Fitzpatrick was the chief executive officer of the Southwestern Development Company at that time, was he not, in 1926 or 1927?

A. I am not sure. Mr. Moody was president, and I am not sure whether Mr. Fitzpatrick was an officer.

Q. You are not sure whether Mr. Fitzpatrick was even connected with Southwestern Development Company?

A. Oh, he was connected, because the company of which he was a chief executive officer was the chief holder of the stock.

Q. That was the Prairie Oil & Gas Company, or the Producers and Refiners Oil Company?

A. The Prairie Oil & Gas Company controlled the Producers and Refiners Oil Company, and the latter owned the majority of the stock, or 51 per cent of the stock of Southwestern Development Company.

Q. And Fitzpatrick was the chief executive officer of the Prairie Oil & Gas Company?

A. That is correct.

Q. How do you know Mr. Fitzpatrick did not consult Mr. Cutler and obtain Mr. Cutler's approval upon these negotiations?

A. I do not know.

Q. As a matter of fact, don't you know that he did consult him?

A. No, I do not think that he did, but I cannot answer you that positively, because it is not within my knowledge.

Q. What makes you do not think that he did?

Trial Examiner: What is that, Mr. March?

By Mr. March:

Q. What makes you do not think—Strike that out.

Are not you familiar with Mr. Cutler's testimony before the Investigating Committee in the United States Senate in 1933? Are not you familiar with Mr. Fitzpatrick's testimony before that body, testifying that he consulted Mr. Cutler frequently?

A. No, I am not familiar with it.

Q. You are, though, familiar with the stockholdings of John D. Rockefeller, Jr., and various trusts set up by John D. Rockefeller, Jr., and Sr., in the Prairie Oil & Gas Company?

A. No, I know nothing more about that than newspaper knowledge.

Q. What proof have you got as to anytime that Fitzpatrick was not working under the direction of Mr. Cutler, Mr. Bertram Cutler in Mr. Rockefeller's office?

A. May I suggest in answer to your question that none of the Rockefellers attempted at any time to interfere with management or make suggestions to management, or to have anything to do with the responsibilities that rested on the Boards of Directors, or the officers of any of our companies, I mean the Standard Oil Company of New Jersey or any of its subsidiaries. Perhaps I have no right to assume that the same attitude was the attitude of the Rockefellers with respect to their other investments in the old Standard Oil companies, but I think that was their attitude.

Q. How do you know they did not have Mr. Cutler do the directing and informing?

A. I do not think the Rockefellers do business that way.

Q. How do you know they did not?

A. From my experience with my own company.

Q. You had two men between you and the Rockefellers, I mean the principal stockholders of the Standard Oil, did you not, that is Mr. George H. Jones and Mr. Teagle?

A. Yes.

Q. You were the third man in the organization in so far as authority was concerned?

A. So far as natural gas operations were concerned, I was in charge of them.

Q. Now we have a three-way proposition here, we have three companies, as I see it. We have the Southwestern Development Company, we have the Standard Oil, then we have the C. F. & I. Why was it so essential to get the C. F. & I. business for this project?

A. The volume of gas that could be used by the steel company and the price it could afford to pay.

Q. What is important to this C. F. & I. contract to the project?

A. The importance was if the project did not have that volume of gas it would not have sales enough to support the project.

Q. You mean firm sales now?

A. Any kind of sales.

Q. Was the C. F. & I. contract a profitable contract?

A. I should say it was a very essential contract and a profitable one.

Trial Examiner: Do you adopt the testimony of Mr. Spencer, Mr. Payne, that it was indispensable?

The Witness: I certainly do.

By Mr. March:

Q. The Denver service was not indispensable, was it?

A. The Denver service was also indispensable. There were those two necessary factors.

Q. They could have built that line up there to C. F. & I. without even having the Denver service, could not they, very profitably?

A. No, sir.

Q. Do you know that to be a fact?

A. I think so, in my judgment.

Q. Did you investigate that phase of the angle, I mean of the proposition?

A. Our preliminary reports were quite clear on that, yes, sir.

Q. You did at that time then consider just bringing the pipe line up to the C. F. & I.?

A. No.

Q. Now, as a matter of fact, Mr. Payne, was not the

idea of this project broached by the Cities Service Company?

A. It was not.

Q. You were approached by Southwestern Development Company, were you not?

A. I was approached by Mr. Fitzpatrick of the Southwestern Development Company, yes, sir.

Q. Did you know that Mr. Fitzpatrick of the Southwestern Development Company had not in turn been approached by the Cities Service Company?

A. Not that I know of, to my knowledge.

Q. Did you know that the Cities Service had attempted to secure the C. F. & I. business for this project and could not do it until it got the Southwestern Development Company interested in the project?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir. I mean definitely I never heard of that.

Q. You were familiar with the negotiations for this project as early as 1926, were you not?

A. My first attention was called to it in June of 1926, but I assume you are referring to the fact that a man named Mina Young had an option on Southwestern's gas with the idea of laying a line to Denver and possibly to the steel plant, and that option was expiring the first of August of 1926, and Mr. Young was unable to go through with it. That is all that I know of anything prior to the time my attention was drawn to this matter.

Q. You do not know what efforts the Cities Service Company had made to secure the business of C. F. & I. and put this project through until they got Mr. Fitzpatrick interested?

A. I do not. I went to Mr. Creveling when we were investigating the markets in the summer of 1926, and he said this man Young had been fiddling around out there and he would be very glad if a responsible group would bring gas to Denver.

Q. Who told you that?

A. Mr. Creveling of the Cities Service organization. Mr. Creveling was in charge of the gas operations of the Cities Service group.

Q. When did this man see you?

A. Oh, that was in August of 1926.

Q. And previously in June Mr. Fitzpatrick had broached the subject to you?

A. That is correct.

Q. Did Mr. Fitzpatrick bring this man into your office and introduce you to him?

A. No, it was part of our job to find markets. My immediate undertaking was to see what reaction the Cities Service group would take to the proposition.

Q. Did not Mr. Fitzgerald tell you that his negotiations with the Cities Service Company were proceeding—did not he tell you of his negotiations with Cities Service in any way?

A. I never heard of them.

Q. You proceeded on your own initiative to investigate the feasibility of the market, the possibility of the market?

A. That is correct.

Q. What did Fitzpatrick tell you when he came to you and sold you on the idea of going in on this project?

Mr. Spencer: Mr. March, I think that has been covered thoroughly, both in the direct testimony and in this testimony.

Mr. March: What I am interested in is the line of Mr. Fitzpatrick's representations on this project. What I want to know is what representations were made to him in regard to this project.

Mr. Spencer: You may have a better memory than I have. I do not at the moment recall that there is a line of testimony in this record any place that Mr. Fitzpatrick ever had any conversations with Cities Service regarding an independent organization on this project.

Mr. March: There is testimony in the record—

Trial Examiner: Just a minute, Mr. March.

Mr. March: Yes, sir.

Trial Examiner: Are you directing your questioning now at the representations that Mr. Fitzpatrick made with respect to the Cities Service?

Mr. March: No, made to Mr. Payne, in other words, in regard to this project.

Trial Examiner: At the time Mr. Fitzpatrick contacted Mr. Payne in regard to this project?

Mr. March: That is right, sir, the first time.

Trial Examiner: I think he testified to that.

By Mr. March:

Q. What was the extent of his representations to you, Mr. Fitzpatrick's representations to you, in regard to this project?

A. Of course, I cannot give you his exact words, but this was the substance of his visit:

"We have in the Amarillo field blocked up an area of gas leaseholds and have the greatest gas field that has ever been discovered in the world. We think that you are the people qualified to develop that field and market the gas, and I proposed to Mr. Teagle we go in 50-50 on the proposition. Won't you put your men to work investigating the field? We will give you all the information you need in respect to wells' records, and things of that kind. Our men will meet your men out there and study the proposition. Then after their reports are in we will discuss the details of the project, if it is feasible, if it proves to be feasible."

Q. The reports which your men turned in as to the gas there varied, I believe you testified, they were not the same; in other words, they were high and low, as you recall it?

A. That is correct.

Q. Now did Mr. Teagle speak to you before Mr. Fitzpatrick did?

A. Yes. On Mr. Teagle's return from the oil meeting in Tulsa he said, "I had a talk with Fitzpatrick. They have got some great gas territory there, and he is coming to New York to see you about it."

Q. I see. Now in these negotiations for the purchase prices of these leases, the Amarillo lease, you always, as I rather, referred the propositions to your superiors in the Standard Oil organization for their approval or disapproval, with your recommendations?

A. When it came to a proposition of the Standard Oil Company investing money in a new project, our depart-

ment studied the project, made out recommendations, asked for the money to go ahead with the project.

Q. Well, there were four or five preliminary purchase prices arrived at, tenders were made by the Southwestern Development Company, and on each one of the preliminary propositions you consulted Mr. Teagle in regard to it, or Mr. Jones?

A. No.

Q. You did not consult either one of them?

A. I did not.

Q. You waited until you offered them the \$5,000,000 before you told Mr. Teagle or Mr. Jones anything about your offer?

A. We completed the dicker right down to the point where we could go no further with it.

Q. You made, on your own initiative, the offer of \$5,000,000 for these properties, for the Amarillo oil?

A. I did not say that; I did not say that. I said we found that the last word from the Southwestern Development Company was \$5,000,000 and half the stock. Seeing that that was the end of the road we recommended its acceptance.

Q. Did you report to Mr. Teagle or Mr. Jones in regard to it?

A. No. I think I talked verbally to Mr. Jones.

Q. You talked to Mr. Jones in regard to that?

A. Yes. Mr. Teagle was away on his fishing trip.

Q. Did Mr. Jones say that was acceptable to him?

A. He approved it.

Q. Approved it immediately?

A. No, I cannot recall that.

Q. He did not approve it the same day you told him about it, did he?

A. Well, I cannot say whether it was immediately or whether he carried it over a day; it was almost immediately, because Mr. Fitzpatrick was awaiting the answer.

Q. Do you know whether Mr. Fitzpatrick ever saw Mr. Jones or not in regard to this project, in the negotiations?

A. That is a hard one to answer. So far as the negotiations were concerned, I do not think Mr. Fitzpatrick had any negotiations with Mr. Jones.

Q. You do not think so?

A. No. They were friends.

Q. They were friends?

A. Oh, yes, they were friends.

Q. Of long standing?

A. Yes, of years' standing.

Q. Now what did Mr. Jones tell you when you first started negotiations? Did he tell you there was a limit to what you were to pay for these properties?

A. No, Mr. Jones did not tell me anything about it. He had nothing to do with the initiation of these negotiations.

Q. Did he authorize you to conduct the negotiations?

A. No. That is Mr. Teagle.

Q. He authorized Mr. Teagle then?

A. I do not see why you say that.

Q. Did he or did he not, or do you know?

A. No, I do not think he did.

Q. Mr. Payne, the Board of Directors of Standard Oil is not accustomed to enter into \$5,000,000 negotiations without the approval of the Board of Directors of the Standard Oil; are they?

A. My dear sir there was not anything to submit to the Board of Directors until October. We got to the end of the dicker.

Q. Did the Board of Directors ever meet to consider this proposition, that you know of, prior to the end of the dicker?

A. Not that I know of. It is perfectly possible that Mr. Jones may have talked to one or two of the other members of the Board. I know his answer was almost immediate.

Q. Including Mr. Cutler?

A. Not that I know of. Mr. Cutler had nothing to do with the Board of Directors of the Standard Oil of New Jersey in any respect.

Q. Do you know of your own knowledge whether or not any large financial transactions were put through by Standard Oil without the approval of Mr. Cutler? Do you know positively whether they were or not?

A. Certainly, Mr. March. You forgot that later I became the vice president and treasurer of the Standard Oil Company. I knew what relations the organization had with stockholders. I say that the Rockefellers never interfered

with the action of the directors, never took any part in the business matters of the organization.

Q. Of course you were not familiar with what went on between Mr. Cutler and Mr. Jones, to your knowledge, or Mr. Fitzpatrick, of your own knowledge, during the negotiations on this particular contract back there in 1927?

A. I know nothing about it but I think there was no communication between them.

Q. Now did you ever subsequently see Mr. Cutler in regard to the contract that you negotiated with the C. F. & I?

A. No, Mr. Cutler had nothing to do with the negotiations on that contract, excepting the matter of introduction.

Q. How do you know he did not have something else to do with it?

A. I cannot answer that question, because I do not know.

Q. For all you know, he might have instructed the president of the C. F. & I, to consummate the contract with the Carolina State Gas Company?

Trial Examiner: Mr. Payne need not answer that question, Mr. March. He told you what he knows about it.

Mr. March: All right, sir.

By Mr. March:

Q. How long did these negotiations continue?

Trial Examiner: What negotiations are you speaking of?

Mr. March: For this contract of April 5, 1927, from June 1926 to April 5, 1927.

A. Well, you see, Mr. March, there were different phases of that contract that was finally embodied in the stipulation: First, the relations between the Southwestern Development Company and the project; and then later the relations between the project and the Public Service Company of Colorado; and those were negotiated at different times.

Q. You settled your negotiations with Mr. Fitzpatrick, and then you, too, negotiated with the Cities Service Company?

A. After that, yes, sir.

Q. You had all of your negotiations completed as far as

you and Fitzpatrick were concerned when you started with the Cities Service Company?

A. I think that is correct.

Q. Did you also agree on just what you would let Cities Service have in the project? What interests you would let them have in the project?

A. No, we knew nothing about that. At the time negotiations were carried on with the Southwestern Development Company we had not yet broached the city-gate contract with the Public Service Company of Colorado; that came later.

Q. You did not negotiate with Public Service of Colorado, you negotiated with Cities Service Company, did you not, which was the parent company?

A. No, we talked with Mr. Creveling and Mr. W. A. Jones of the Cities Service Company's New York office. Mr. Creveling was in charge of natural gas operations of the whole Cities Service group, but we also had in our conferences the president of the Public Service Company of Colorado who came during those negotiations into the matter of making the contract—What was his name?

Mr. Spencer: Stannard.

The Witness: Stannard.

By Mr. March:

Q. The Public Service of Colorado, of course, was not a party to the contract, the tri-partite agreement?

A. It was not a party to the stipulation, no.

Q. Now was there any disagreement between you and Fitzpatrick as to the participation which you would permit Cities Service Company to have in the project?

A. You see, Mr. March, we carried on negotiations with Mr. Stannard and Mr. Creveling and Mr. Jones and the engineer over there.

Mr. Spencer: A Mr. Hancock.

The Witness: Yes. And did our best to arrive at a contract, to arrive at a city-gate price, and reached the point where the Cities Service Company and lawyer associates walked out on us and it looked as if there was not going to be any contract.

By Mr. March:

Q. Walked out on you and Fitzpatrick?

A. No, walked out on Mr. Gallagher and me.

Q. Mr. Gallagher being an official of your company, the Standard Oil?

A. He was my right-hand man, yes, sir, at that time.

The negotiators on the side of Cities Service Company left a foot in the door, however, and in a week or two came back. When they came back the first discussion was had as to a participation in the project on the part of Cities Service. So in answer to your question, it was not until that time that Mr. Gallagher and I could communicate to Mr. Fitzpatrick as to what the situation was with respect to participation by the Cities Service Company.

Q. So you carried on the initial negotiations with the Cities Service Company with regard to the participation and Mr. Gallagher sat on the side lines and let you carry on these negotiations?

A. Well, we both were in that.

Q. Did you answer my question as to whether or not there was any disagreement between you and Mr. Fitzpatrick as to the participation of the Cities Service Company in the project?

A. Well, I gave you a rather long answer which ended in the fact that there was no discussion of that participation until this break in negotiations, and they came back with the proposition.

Q. I will ask you the question, were there any disagreements between you and Mr. Fitzpatrick as to the participation of the Cities Service Company in this project?

A. No, I think we reported to Fitzpatrick that here was the Cities Service's last answer and they would be satisfied with nothing less than 15 percent participation, and we recommended its acceptance.

Q. Do you know what happened in regard to the \$5,000,000 in cash that the Amarillo Oil Company was supposed to get for these leases?

A. Well, I only know that the titles were cleared.

Q. The titles were cleared?

A. To the leases that were conveyed by the Amarillo Oil Company to the Canadian River Gas Company.

Q. Do you know of your own knowledge whether or not the Amarillo Oil Company actually received that \$5,000,000 in cash?

A. No, I cannot answer that question.

Q. Do you know how much of that \$5,000,000 the Prairie Oil & Gas Company got, if any?

A. It is my recollection that Prairie Oil & Gas Company had been the sugar-daddy on that proposition out there, and it loaned money, and probably that money was paid back, although I had no knowledge in regard to that.

Q. You had no knowledge in regard to that?

A. No.

Q. For all you know the Prairie Oil & Gas Company might have gotten all of that \$5,000,000?

Mr. Spencer: I object to that, Mr. Trial Examiner.

Mr. March: I have a right to ask him that question.

Mr. Dougherty: He simply says he does not know anything about it.

Trial Examiner: He says he does not know.

Mr. Dougherty: So it is speculative as to what might have happened.

Mr. March: All right, sir.

By Mr. March:

Q. Now in what way was this \$5,000,000 paid to Southwestern Development Company interests, or the Amarillo Oil Company?

A. I am trying to recall whether that money was paid after the bonds were issued and signed and delivered, or whether the money was advanced some time before that and interest paid on the advances just as if it had been paid for out of the sale of bonds. I am not sure.

Q. You do not know how the money was actually paid or how it was paid, or anything about the details?

A. I think it was paid to the Southwestern Development Company, and sometime prior to the issue of bonds, I think. There were a number of advances made during the course of the organization by the Standard Oil Company which were to be repaid when the contracts were completed. That may have been one of them.

Q. But in so far as the details are concerned, you do not recall?

A. I do not recall.

Q. Do you know if there were strings tied to that \$5,000,000, to see that it is properly spent or where it went to, or anything about it?

A. I did not regard that as our concern, excepting to see that the leases and properties were free from any lien or encumbrance, and we had all those titles examined by lawyers in Houston and Amarillo.

Q. Now I have here the stockholders' list of the Standard Oil Company as filed with the Committee of the United States Congress, containing House Report No. 2192, and I will ask you to examine that and see if your recollection of the stockholders' list is substantially the same in so far as the first three stockholders are concerned as it was in 1927?

Mr. Dougherty: Will you refer to the page?

Mr. March: Page 211, Standard Oil of New Jersey.

By Mr. March:

Q. The largest stockholder there being John D. Rockefeller, Jr.

A. My answer to that is that I think I knew at that time that Mr. John D. Rockefeller, Jr., owned something around 11 percent of the stock of the Standard Oil of New Jersey.

Q. In 1926 and 1927?

A. In 1926 and 1927. And that Mr. Rockefeller, Sr., had sold all his holdings to these foundations.

Q. Various foundations set up by Rockefeller?

A. The foundations mentioned down below. No, I do not know, nor could I confirm the holdings that are listed here in any respect.

Q. What man did you consider as being the man who handled all of John D. Rockefeller's financial affairs?

Mr. Spencer: Which Rockefeller, and when?

By Mr. March:

Q. John D. Rockefeller, Jr., and in 1926 and 1927.

A. As a matter of fact I do not know much about it. Mr. Rockefeller maintained an office.

Q. You saw Mr. Cutler, did you not, in regard to the stock participation of John D. Rockefeller, Jr., in this project?

A. In regard to what?

Q. Participation of John D. Rockefeller, Jr., in this project.

A. In the purchase of bonds?

Q. Yes.

A. Yes, I saw Mr. Cutler, and Mr. Cutler was the one who gave me the letters of introduction to Mr. Welright.

Q. Was he generally known to be the man in Mr. Rockefeller's office who handled all his financial affairs?

A. No, that is not correct Mr. March. He was reputed to have principal charge of investments in railroad bonds, railroad specialties. There were others, and I do not know them.

Q. You do not know any of the others, do you?

A. Well, I met the man who handled the financial affairs of the foundations or the men, rather, Mr. Turnbull, Mr. Fosdick, and in later years Mr. Nelson Rockefeller, a very active man, but my contacts, as I have said, were with Mr. Cutler.

Q. What occasioned you to contact the principal man in the Rockefeller foundations during your tenure of officer and director of Standard Oil?

A. Well, as you know—and perhaps you do not know—they purchase from time to time some bonds, both of the Standard Oil Companies and of specialties.

Q. You therefore kept contact with them for that purpose?

A. Yes.

Q. Was it part of your duties to handle the floating of bonds of Standard Oil of New Jersey, the negotiation for the sale of those bonds?

A. Only once, in 1934, when there was a refinancing operation.

Q. Were those bonds distributed to the public?

A. Well, you know it was a fashion then not to sell bonds to the public which required a prospectus and an advertisement and a long delay before the Securities and Exchange Commission, and we placed the bonds with a few institutions privately.

Q. And a few individuals privately?

A. Institutions.

Q. And individuals?

A. Well, if you want to call it that way.

Q. In other words, there was a date when they had the preferred list, so to speak?

Trial Examiner: I do not see any connection with this case, Mr. March.

Mr. March: The connection is just this: Here is a man, one of the chief executive officers of Standard Oil of New Jersey, who contacted frequently persons who had, we contend, the voting power of the Standard Oil Company stock, controlling part of the Standard Oil Company stock of the Rockefellers and their financial views. I want to explore his connection with that. I am just about through with this line.

Trial Examiner: It is all right, if you want to explore that.

By Mr. March:

Q. Did Mr. John D. Rockefeller, Jr., get any of these bonds in 1934 that were issued by the Standard Oil of New Jersey?

A. Yes. We sold some to the Bankers Trust, Guaranty Trust, J. P. Morgan & Company, and the National City Bank.

Q. I did not ask for a list.

A. And the Chase National Bank, and these foundations that you have mentioned.

Q. Do you know how much John D. Rockefeller, Jr., got?

A. John D. Rockefeller, Jr. took some of the bonds. I do not remember just what it was, perhaps \$3,000,000, \$4,000,000 or \$5,000,000.

Q. Did you see Mr. Cutler in regard to that transaction?

A. No, I saw Mr. Rockefeller personally, and Mr. Turnbull and Mr. Fosdick—I saw all three of them, and I saw Mr. Cutler.

Q. I understood your testimony previously that you did not see Mr. Rockefeller personally prior to the April 5, 1927 meeting. As I understand your testimony today, you

did see both Mr. Cutler and Mr. Rockefeller. Did you see Mr. Rockefeller personally in regard to this project prior to 1927?

A. No.

Q. The only one you saw was Mr. Cutler?

A. The only one I saw was Mr. Cutler, asking him for letters of introduction.

Q. And explained the project—you told him all about the project at that time?

A. Told him something about it, sir.

Q. Mr. Hancock, you mentioned him a few minutes ago. Mr. Hancock was prominent in the negotiations of this agreement on the part of Cities Service Company, was he not?

A. Mr. Hancock was consulted as an engineer. He was not very prominent in the negotiations at that time. Later he became more prominent in the activities of Cities Service Company.

Q. What did Mr. Spencer have to do with the negotiations of this agreement, P. C. Spencer?

A. This gentleman there (indicating)?

Q. Yes.

A. I did not know Mr. Spencer in 1926 or 1927.

Q. He was not prominent in the organization at that time?

A. No.

Q. When did you first become acquainted with Mr. Spencer?

A. I think Mr. Spencer came into the picture very strongly in the beginning 1928, when the contracts were being drafted, and deed of trust drafted along in that period.

Q. In 1928?

A. Yes, sir.

Q. On the part of whom? Whom was he representing?

A. He represented the Southwest Development Company.

Extracts from Exhibit 10, being "Document No. 92, Part 83, of the Seventieth Congress, First Session, entitled 'Letter from the Chairman of the Federal Trade Commission Transmitting in Response to Senate Resolution No. 83, Seventieth Congress, a Monthly Report on the Electric Power and Gas Utilities Inquiry', filed with the Secretary of the Senate December 15, 1935."

Testimony of CHRISTY PAYNE Before Federal Trade Commission.

Question. You played a rather prominent part, did you not, in the organization of the Colorado Interstate Gas Co.?

Answer. Yes, sir. I was associated with others in the formation of that company.

Question. And you became the president of the company, did you not?

Answer. I was the first president of the company; yes, sir.

Question. And you were president during the year 1927?

Answer. Yes; I think so.

Question. And the other interests in the ownership of the Colorado Interstate Gas Co., I understood, were the Southwestern Development Co. and the Cities Service group?

Answer. The Southwestern Development Co. owned 42 1/2 percent; Cities Service Co., 15 percent.

Question. And your interests, 42 1/2?

Answer. And the Standard Oil Co. of New Jersey, 42 1/2 percent; yes, sir.

Question. One of the important considerations in the organization of the Colorado Interstate Gas Co. was finding a market for the gas, was it not, up in Colorado?

Answer. That was the sole purpose of the organization of the company; yes, sir.

Question. And in the available markets or possible markets Denver figured as probably the most important one, did it not?

Answer. There were two important factors. Without either one of these the project was not feasible. One was the city of Denver and the other was the steel plant in Pueblo.

Question. Which of those two was the more important?

Answer. Well, that is hard to say. They both were necessary to support the practicability of the enterprise. The steel plant gave the steady load, and the Denver plant gave the domestic load.

Question. But there were some industrial loads at Denver, also, were there not?

Answer. Rather small ones, yes.

Question. In order to assure yourselves of an outlet in Denver, you had to arrange matters through the local distributing company there, did you not?

Answer. Yes.

Question. The Public Service Co. of Colorado?

Answer. We had to negotiate a contract for delivery of natural gas to that company.

Question. And did you negotiate such a contract, as a preliminary to the organization of the company, or as a part of the organization?

Answer. I would say as a preliminary.

Question. The matter of whether the Public Service Co. of Colorado had a franchise to serve gas in the city of Denver was a matter of considerable importance to the Colorado Interstate Gas Co., was it not?

Answer. It was.

(Pp. 196-197.)

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Question. Were you familiar, Mr. Payne, with the testimony of Mr. William S. Fitzpatrick, before the Senate committee, investigating the stock exchanges, with reference to his, Mr. Fitzpatrick's connection with the Prairie Oil and Gas Co.?

Answer. No; I don't believe I ever saw it, Mr. Wooden.

Question. I have it here, appearing on page 3307, of part 7, of the report of those hearings, and I would just like to read a portion of it for the record, as a basis for a few more questions of you. [Reading:]

Mr. Fitzpatrick. I came to the Prairie Oil & Gas Co. in 1908, and continued in one capacity or another with the Prairie Oil & Gas Co. down to the time that it was taken over by the Consolidated.

Mr. Pecora. Were you, during any part of that period, an officer or director of any other corporation engaged in any phase of the oil business?

Mr. Fitzpatrick. None except a few smaller concerns that were largely owned or that the Prairie Oil & Gas Co. had a large interest in.

Mr. Pecora. Was the Prairie Pipe Line Co. one of them?

Mr. Fitzpatrick. No.

Mr. Pecora. Were you connected with that corporation?

Mr. Fitzpatrick. Not officially.

Mr. Pecora. Were you through any community of interest between the corporations that you were connected with in that corporation?

Mr. Fitzpatrick. No; except that the owners of about 60 percent of the stock in one company owned stock in the other; and in one company, I don't know which one it was, it was 65 percent, about.

Senator Couzens. Were the Rockefellers interested in the Prairie Co.?

Mr. Fitzpatrick. Both companies.

Senator Couzens. Both the pipe-line and the oil company?

Mr. Fitzpatrick. Yes, sir.

Senator Couzens. Did they have a controlling interest?

Mr. Fitzpatrick. No, sir.

Senator Couzens. Do you know the percentage of interest which they had?

Mr. Fitzpatrick. Only approximately. I think they had about 22 or 23 percent of the oil and about 20 percent of the pipe.

Mr. Pecora. Does not that represent a management control for all practical purposes?

Mr. Fitzpatrick. I do not know what you mean by "practical purposes". Mr. Pecora.

Mr. Pecora. For purposes of operation of the company.

Mr. Fitzpatrick. The stock represented by the Rockefeller's and their friends, the trusts and people that had been formerly associated with the old gentleman in years gone by, or their relatives; had, as I remember it, something like 40 or 42 percent.

Senator Couzens. Who represented the Rockefeller's in the management?

Mr. Fitzpatrick. Well, I don't know that anybody represented the Rockefeller's exactly. I came as near it, I presume, as anybody.

Senator Couzens. You were representing them on the board of directors?

Mr. Fitzpatrick. I was always elected on the board of directors with the proxies that they sent in and the others.

Senator Couzens. So you were always looked upon as a Rockefeller man?

Mr. Fitzpatrick. I could not say how I was looked upon.

Would you say that—from your knowledge of the affairs of the Standard Oil Co. of New Jersey—that, as Mr. Fitzpatrick testifies, the practical control of the Prairie Oil & Gas Co. was in the hands of the Standard interests?

Answer. Did you say "in the hands of Standard interests"?

Question. Well, Rockefeller interests, then.

Answer. Well, that is decidedly different.

Question. I guess it is. I am referring to Mr. Fitzpatrick's testimony. In other words, would you agree with that statement of his?

Answer. In my experience, I have had no contact whatever with the Prairie Oil & Gas Co. or its operations, or its management, or its control, or stock ownership; and I do not know anything about it.

Question. You were never affiliated in any way at all with the Prairie Oil & Gas Co.?

Answer. No; never in any way.

Question. Was the Producers & Refiners Corporation a subsidiary of Prairie Oil & Gas Co.?

Answer. I understand so.

Question. And, in turn, did the Producers & Refiners Corporation own 31 percent of the voting stock of Southwestern Development Co.?

Answer. I think they owned 50 or 51 percent; yes, sir.

Question. Then, did not the Southwestern Development Co. own all the stock of the Canadian River Gas Co.?

Answer. That is right.

Question. And 42½ percent of the common stock of the Colorado Interstate Gas Co.?

Answer. That is correct.

Question. With an equal amount, 42½ percent, held by Standard Oil Co. of New Jersey?

Answer. Yes, sir.

Question. Would you say that the Standard Oil of New Jersey came into the Amarillo-Denver pipe-line project by virtue of its relationship to the natural-gas reserves owned by the Amarillo Oil Co.?

Answer. Not in any respect; no, sir.

Question. Of course, it was aware that those reserves existed, and it was aware of the relationship between the various corporations, as outlined just now? In other words, it was acting with knowledge of those facts at the time?

Answer. You have just said that the Standard Oil Co. owned 42½ percent of the Colorado Interstate Gas Co., which was not created at the time you are now talking about, with respect to reserves.

Question. The reserves—were they held by the Canadian River interests or the Amarillo Gas Co. interests, prior to the organization?

Answer. Yes. As I understand it, the Producers & Refiners Co., and Mr. Bert Jones and his brother, of Kansas City, had built up these reserves in the Panhandle field, over a period of 8 or 9 years, prior to the formation of the Colorado Interstate Gas Co., and those interests were supplying the town of Amarillo and some industries on the borders of the city of Amarillo.

Question. If not through any interest, indirect or otherwise in the gas reserves of the Amarillo Oil Co., how did

the Standard Oil Co. of New Jersey get into the picture with reference to the organization of the Colorado Interstate?

Answer. These men I have mentioned—Mr. Jones, Mr. Fitzpatrick, and Mr. Moody—came to New York and talked with me about the reserves which they had in the Panhandle field. They said, "We would like to have the Standard Oil Co., with its natural-gas organization, market the gas from that field. We think the reasonable market is up through Colorado, but we would like to have you study it; we would like to have you take an interest, furnish the management, find a market, and organize the whole venture." And it was on the basis of that invitation that the Standard Oil Co. investigated the matter and finally went into the project.

(Pp. 216-217.)

Testimony of NELSON K. MOODY, before Federal Trade Commission.

NELSON K. MOODY, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Wooden.

Question. Will you state your full name and business, please, Mr. Moody?

Answer. I am in the oil and gas business.

Question. And what is the nature of your connection with the oil and gas business?

Answer. I am president of the Southwestern Development Co. Its subsidiaries are in the gas business largely.

Question. Is that the only connection you have with any natural-gas company?

Answer. I am an officer of some of the Southwestern Development Co. subsidiaries.

Question. Will you name those and what office you hold?

Answer. I am president of the Amarillo Oil Co. I am president of the Canadian River Gas Co. I believe that is all in which I am an officer.

Question. Are you also a director of those companies that you have named?

Answer. Yes.

Question. How long have you been connected with the Southwestern Development Co?

Answer. Ever since its organization.

Question. And when was that?

Answer. About 1924.

Question. The Southwestern Development Co., as I understand it, has a 42½-percent interest in the Colorado Interstate Gas Co?

Answer. Yes, sir; that is correct.

Question. What was the business of the Southwestern Development Co. before the Colorado Interstate Gas Co. was formed, which, I believe was '27 or '28.

Answer. Yes. Southwestern Development Co. owned a number of other companies operating in the gas business, distribution and transportation business, production.

Question. What were they?

Answer. The Amarillo Oil Co., Panhandle Pipe Line Co., Amarillo Gas Co.

Question. What was the Panhandle Pipe Line Co. referred to?

Answer. The Panhandle Pipe Line Co. was a gas transportation line that transported gas from the Amarillo gas fields to the city of Amarillo.

Question. And did the Amarillo Gas Co. own a considerable block of gas lands or acreage or leases?

Answer. The Amarillo Gas Co.; no.

Question. What was the company that owned that; Canadian River?

Answer. Amarillo Oil Co.

Question. Was there an Amarillo Gas Co.?

Answer. Yes.

Question. And what did it do?

Answer. It was a distribution company in the city of Amarillo.

Question. Was that a subsidiary of Southwestern Development?

Answer. Yes, sir.

Question. What connection do you have with any oil companies?

Answer. I am president of the Sinclair-Prairie Oil Marketing Co.

Question. What is the business of that concern?

Answer. Buying and selling crude oil.

Question. From what field?

Answer. From the Mid-Continent field, Kansas, Oklahoma, and Texas.

Question. What other oil company connections do you have?

Answer. That is all.

Question. You are not connected with the Consolidated Oil Corporation in any way?

Answer. No.

Question. Is this marketing company you have just mentioned a subsidiary of Consolidated?

Answer. Yes.

Question. Were you at one time an officer of the Prairie Oil & Gas Co.?

Answer. Yes.

Question. During what period and what office did you hold?

Answer. I went to work for the Prairie Oil & Gas Co., in 1910 as assistant general manager. I was later made vice president, later made president, remained as president until the spring of 1932.

Question. And was that the time when the Prairie Oil & Gas Co. was merged in the Consolidated Oil Corporation?

Answer. The Consolidated Oil Corporation bought the assets of the Prairie Oil & Gas Co. in the spring of 1932.

Question. And did you then immediately become the head of this marketing company that you named?

Answer. Yes, within a month.

Question. What is the present relationship between the Southwestern Development Co. and the Consolidated Oil Corporation?

Answer. The Consolidated Oil Corporation owns 51 percent of the Southwestern Development Co.'s common stock.

Question. How is the balance owned?

Answer. The balance is owned very largely by the Mission Oil Co., and there are 4 or 5 smaller stockholders.

Question. Who is the Mission Oil Co.?

Answer. The Mission Oil Co. is controlled very largely by Mr. Albert R. Jones and associates of Kansas City.

Question. And who is the Consolidated Oil Corpora-

tion, in the same way? Who are the people who are prominent in its control or management?

Answer. I cannot answer that.

Question. Although you are the president of a direct subsidiary of the Consolidated?

Answer. Yes; what I mean by that is it has a very large number of stockholders, and I know of no individual or group in which control is vested.

Question. Were you ever a director of Consolidated?

Answer. Yes, sir.

Question. When?

Answer. From early in 1932 until about a year ago.

Question. Then you were a director at the time Consolidated was formed, became a director upon its formation in 1932?

Answer. The Consolidated Oil Corporation was not formed at that time. It had been in existence for many years before that.

Question. But even though you had been a director during the period you named of the Consolidated Oil Corporation, you still have no idea of who the interests are that control it and direct its management?

Answer. I know who some of its managers are, but I do not know where the control is vested.

Question. I am not speaking of what you might say technical, legal control, but practical operating control.

Answer. Oh. Well, I know the management of the Consolidated Oil Corporation.

Question. Who is that?

Answer. Mr. H. F. Sinclair is chairman of the executive committee. Mr. H. R. Gallagher is president.

Question. Who is he?

Answer. He is a gentleman in the oil business who is president of the Consolidated Oil Corporation.

Question. As a one-time director of the Consolidated, would you say that its practical control and management was in the hands of the Sinclair interests?

Answer. No.

Question. What would you say?

Answer. Mr. Sinclair is very prominent in the management of the company's affairs.

Question. Is he chairman of the board?

Answer. He is chairman of the executive committee, I believe.

Question. Is this Mr. Gallagher connected with Mr. Sinclair in any other way than just as a head of this Consolidated Co.?

Answer. None that I know of.

Question. Can you name the other officers and directors of the Consolidated?

Answer. Mr. Thirte'l is the comptroller, and I haven't the directors in mind right now.

Question. Can't you name some of them, such as you remember them when you were on the board?

Answer. Mr. W. S. Fitzpatrick is a director. Mr. E. W. Sinclair is a director.

Question. What is his relation, if any, to H. F.?

Answer. He is a brother. That is all that I can recall at this time. Mr. J. F. Farrell is treasurer.

Question. And who is he?

Answer. He is the treasurer of the Consolidated Oil Corporation.

Question. Can you tell me anything else about him?

Answer. No; except that he is a very delightful gentleman.

Question. We will take that for granted. There is no top company or holding company above the Consolidated Oil Corporation, is there?

Answer. I don't understand just what you—

Question. I mean, did any other corporation own or control the Consolidated Oil Corporation?

Answer. Not that I know of; no, sir.

Question. Or did any other company have any substantially large stock interests in it?

Answer. I cannot say as to that. I am not advised.

Question. At any rate, did any other oil or gas company have any substantial stock interest in the Consolidated?

Answer. No; not that I know of.

Question. Can you say when Consolidated Oil Corporation acquired its 51 percent of the stock of the Southwestern Development Co.?

Answer. It acquired them as a part of the assets of the Prairie Oil & Gas Co. at the time it bought its assets.

Question. In what year?

Answer. Spring of 1932. (After conferring with an associate.) May I correct that statement?

Question. Surely.

Answer. It acquired them at the receiver's sale of the Producers & Refiners Corporation, which owned the 51 percent of the Southwestern Development Co. up to that time.

Question. So that the same 51 percent that the Producers & Refiners formerly owned of the Southwestern was acquired by the Consolidated; is that right?

Answer. Yes.

Question. And when was that?

Answer. It was in May 1934.

Question. Did you state how that acquisition came about? That is, was it purchased at a receiver's sale?

Answer. Purchased at the receiver's sale.

Question. Do you know what was paid for it?

Answer. Not directly; no, sir.

Question. Do you know the general character of the consideration that passed?

Answer. I believe it was \$3,000,000.

Question. You think that was the only consideration?

Answer. That is my recollection.

Question. Did any part of that reach the stockholders of Producers & Refiners?

Answer. I cannot say as to that, Mr. Wooden. The company was in receivership.

Question. Don't you know as a matter of fact that as a result of the receivership the stockholders of Producers & Refiners received nothing?

Answer. No, I do not.

Question. You never heard that?

Answer. No; I don't know that I ever did.

Question. Did Prairie Oil & Gas Co. control Producers & Refiners Corporation?

Answer. It owned the majority of the stock.

Question. How much was it? Was it 65 percent.

Answer. Approximately.

Question. Southwestern Development Co., as I understand it, owned the Canadian River Gas Co.; is that right?

Answer. Yes.

Question: Also owned the Amarillo Oil Co.?

Answer: Yes.

Question: Did the Amarillo Oil Co. have a large amount of gas reserves?

Answer: Yes.

Question: And were those reserves sold to the Canadian River Gas Co.?

Answer: Yes.

Question: I take it that the Southwestern Development Co., in control of both of those corporations, controlled also the terms and substance of the sale, that is, the terms on which the sale was made from the Amarillo Oil to the Canadian River Gas Co.?

Answer: Well, it no doubt approved the conditions under which it was done.

Question: It could not have been done without its approval?

Answer: Probably not.

Question: Was there a considerable profit taken by one company from the other in the course of that transaction?

Answer: The Amarillo Oil Co. received for the property more than the cost represented by its books.

Question: I think we have a report somewhere in our record that shows the amount of profit made on that deal.

Answer: It was approximately \$3,000,000 plus, which is purely an intercompany profit.

(Pp. 608-612.)

Question: As a matter of fact that market along the Colorado Interstate Gas Co. pipe line was really small compared to the reserves that you had?

Answer: That is correct. I might add there that the formation of the Colorado Interstate Gas Co. and the arrangement that was made in connection therewith were matters of very vital importance at that time to the Southwestern Development Co., and its subsidiaries. The Southwestern Development Co. was in very bad shape at that time. It had a mortgage out which was in default, and everything that it owned was pledged under that mortgage.

(P. 620.)

Question. Were you a director of the Canadian River Gas Co?

Answer. Yes.

Question. Who were the other directors?

Answer. I don't recall.

Question. Don't you recall any of them?

Answer. I cannot tell you that from memory, Mr. Wooden.

Question. You mean you cannot remember any of them?

Answer. At the time of the organization?

Question. Yes.

Answer. Why, I was a director. Mr. Fitzpatrick was a director, Mr. Albert Jones.

Question. Is Mr. W. A. Jones?

Answer. No; it is Albert R. Jones, Kansas City.

Question. Wasn't there a representative of the Cities Service Co. on the board?

Answer. On the Canadian River Gas Co.?

Question. Yes.

Answer. Not that I recall.

Question. Was there a member of the board representing the Colorado Interstate Gas Co.?

Answer. I don't believe there was any member of the board representing the Colorado Interstate Gas Co.; no.

Question. It appears from the organization agreement of April 5, 1927, which is a part of Mr. Prichard's report, that it was agreed that the Colorado Interstate could name one director on the board of Canadian River Gas Co. Does that help you?

Answer. I had forgotten that provision. Mr. R. W. Gallagher was on that board for a time; rather short time.

Question. As a representative of the Colorado Interstate?

Answer. I don't understand that is so, but probably so; yes.

Question. That is the Mr. Gallagher who is prominently identified, is it not, with the Standard Oil Co. of New Jersey and its gas division?

Answer. Yes.

Question. Was there any representative on the board of Canadian River Gas Co. that you understood to represent the Standard Oil Co. interest?

Answer. No; never.

Question. Wasn't Mr. Gallagher in a position really to represent both the Colorado Interstate and the Standard?

Answer. He was connected with the Standard Oil Co.; yes.

Question. As far as you know, there was no representative of Cities Service Co. on the Canadian River Gas Co. board?

Answer. I think I can state positively that there never was.

Question. Reverting for a moment to the profit made by Amarillo Oil Co. on its sale of gas leases to Canadian River Gas Co., you said that was an intercompany profit?

Answer. Yes.

(P. 621.)

Testimony of W. S. FITZPATRICK before Federal Trade Commission.

Question. Do you recall your testimony given in the investigation of the Senate Committee on Banking and Currency?

Answer. I recall that I did give some testimony before a Senate committee. I could not say that I remember the title of the committee.

Question. I have here what is the printed copy of your testimony in that matter.

Answer. That is better than my recollection now.

Question. And testifying with respect to a division of the profits of a syndicate in which you participated you said, on page 3311:

It was something that I thought Rockefellers had arranged for me, in view of the more than 20 years' service I had rendered the company in maintaining its charter rights in the State.

Wouldn't you say that you had considered yourself a representative of the Rockefellers in the Prairie Oil & Gas Co.?

Answer. No; I would not say that. But this I can say, that the Rockefellers, or one Rockefeller, the young man,

was a substantial stockholder in the Prairie Oil & Gas Co., and I always voted his proxies; but it was a minority interest that he held, and I did understand from him or from his office that they had when they sold some shares of The Prairie Co. arranged with the people who bought it to make me some money on the profit of the sale of that stock. I believe that is the substance of my testimony there. That is the fact.

Question. On page 2307 of that same record of your testimony before the Senate committee you were asked by Senator Couzens:

Who represented the Rockefellers in the management?

That is, of the Prairie—and your answer was:

Well, I don't know that anybody represented the Rockefellers exactly. I came as near it, I presume, as anybody.

Answer. I think that is true.

Question. You think that is correct?

Answer. I don't think that Rockefellers required as stockholders or had a representative to manage the Prairie Oil & Gas Co. in their interests.

Question. When the Consolidated was formed in 1922, as I understand it, it was a consolidation of the Prairie Oil & Gas and the old Sinclair Consolidated?

Answer. Yes; and the Prairie Pipe. They were consolidated, but the formula was the sale of the assets of the two Prairie Cos. to the Consolidated.

Question. In that consolidation did not the Prairie interests get the larger amount of the Consolidated stock?

Answer. Neither of the Prairie Cos. got a larger amount of the stock issued and distributed directly to the stockholders of the two Prairie Cos.

Question. What did you mean by your testimony before the Senate committee to the effect, on page 3311 that you made out of the Prairie properties, the two companies, the pipe line and the—what do you call the other one—the oil? One was the pipe-line company and the other the oil company?

Answer. Yes.

Question. That you made out of those two companies.

and "made of it a property that entitled us to 8,000,000 out of the 14,000,000 shares of the Consolidated stock"?

Answer. I meant that the stockholders of the Prairie Oil & Gas Co. and the Prairie Pipe Line Co. had while I was with them developed for them a property that the sale of which brought eight or approximately eight of the 14,000,000 shares of Consolidated Oil Co.?

Question. Then the Prairie interests at the time of organization of the Consolidated acquired a majority of the stock? They were entitled to it, you say?

Answer. The stockholders of the Prairie owned immediately thereafter—I don't know what their ownership is now—but immediately after the distribution to them of the approximately 8,000,000 shares received for their properties had eight out of approximately 14,000,000 shares.

Question. Did you go on the board as a representative of those stockholders—the board of Consolidated?

Answer. I didn't vote the shares of those stockholders at the meeting that elected me to the board. I was not even on the committee that voted them. I did not solicit them and I had no correspondence with them. The management of the Sinclair, Mr. Sinclair himself and his associates, asked me to go on that board of directors and take that position. No stockholder that I remember of the Prairie Oil & Gas Co. asked me to do that. I was a stockholder myself, however.

Question. Well, you say that you represented the Rockefellers in the Prairie Oil & Gas Co. as near as anybody did?

Answer. All right; but that don't mean that anybody did as far as I know, and I did not represent them, and I did not know of anybody who did.

Question. But you thought that your services over a long period of years is what explained your participation in this syndicate at the request of the Rockefellers?

Answer. Originally the Standard Oil Co. and supposedly Mr. Rockefeller owned every share of the Prairie Oil & Gas Co., which later went into the Prairie Pipe Line Co., but at the time after the dissolution decree in the United States Supreme Court the elder Rockefeller, to my knowledge, never owned any stock. I never knew of it if he did. The young man had something like 250,000 shares, which was a large amount.

Question. Is it your idea that the Prairie stockholders, entitled to eight out of the fourteen million shares of stock, would go into the Consolidated without having somebody to represent their interests?

Answer. If I should express an opinion it would be just an idea, which is not quite—I can't say is honest-to-God correct—but I don't know of any arrangement with anybody to represent the Rockefellers. I never heard anybody in Mr. Rockefeller's employ say anybody represented him or that he expected anybody to represent him on that board of directors or in that company.

Question. You would not admit that anybody on that board represented the Prairie stockholders' interests, which went to make up 8 out of the 14,000,000 shares?

Answer. No; the Prairie is out of business. We represented the Consolidated Oil Co. and I had been with the Prairie. That probably may have been why they wanted me on there, but I was not asked by any stockholder of the Prairie, and I don't think it was represented at the stockholders' meeting where the stockholders voted to sell the property that I was going on the board of directors.

Question. Were there any other men on the Consolidated board who had formerly been with Prairie?

Answer. Yes.

Question. Who were they?

Answer. Mr. Nelson K. Moody and Mr. Dana Kelsey and Mr. Clark Koontz and myself.

Question. Isn't it expected that in a large corporation the large stockholding interests will be represented on the board by certain individuals?

Answer. I don't want to be misunderstood, but I am quite sure with the opportunity you have had to look into these large corporations you know more about that than I do.

Question. Well, I know about it from the outside looking in. I want you from the inside looking out.

Answer. I have never been in the employ, even in the early days when I was a lawyer, I never was employed by but two corporations in my life, outside of local attorney for a bank. But my corporate business started with my connection with the Prairie Oil & Gas Co. and ended with

my connection with the Consolidated Corporation. Those are the only two corporations I was ever a director in.

Question. When you said before the Senate Committee that you represented the Rockefellers in the Prairie Oil & Gas Co. "as much as anybody did" was there any definite understanding to the effect that you would not continue to represent them in the Consolidated?

Answer. No; but I did think I represented them as much as anybody, because I don't think anybody represented them. Now, if you want me to, I will tell you some more.

Question. In other words, the very large stockholders had no representatives?

Answer. My understanding is—and I believe it is a matter of record—that the decree of the Supreme Court of the United States dissolving the Standard Oil Trust enjoined both the elder and the junior Rockefellers from interfering in the management of any of those dissolved companies, and my observation has been that they always leaned backward to avoid it.

Question. Does that account for your statement that you represented them as much as anybody did, but that nobody represented them?

Answer. No; it does not account for it. I don't say that nobody represented them. If anybody did, or does now, I don't know it. That is all I said. It is their business, not mine. And if I did represent them, or I knew my present relation to the Consolidated Oil Corporation was at their dictation or at their suggestion, I would say so, but I do not.

Question. Wouldn't you say as a matter of almost inevitable result that when two large interests pool their properties and consolidate them and form a new corporation those interests will see to it that they have representatives on the board of the new corporation?

Answer. I should say that depended a good deal on the fellow that was doing the inferring.

Question. I am asking what you would.

Answer. I would not; and if I did, I would not make it applicable to this case any more than I have told you, because I do know what I have told you.

Question. Did you have a large investment in the stock of Prairie Oil & Gas Co. yourself?

Answer. Somewhere in the neighborhood of 10,000 shares, and a little more in the pipe line.

Question. What proportion was that of the total?

Answer. You mean I had at the time they sold out?

Question. Yes.

Answer. I don't remember definitely the number of shares.

Question. A very small proportion, was it not?

Answer. Oh, 10, 15, 17, thousand shares, or something like that.

Question. Out of how many?

Answer. Out of 14,000,000.

Question. In other words, you were not sufficiently interested in the stock of the company in your own right to insure your election as a member of the board?

Answer. Oh, no. I could not have forced it at all, and, bless your heart, I would not have done it.

Question. And wasn't that true also of the other directors who had formerly been with Prairie?

Answer. I think that is true of all the directors. I think you will find none of the present directors of the company own enough stock to force their election. In fact, many of them do not own as much stock as I do, and I could not.

Question. Those things are usually arranged by some understanding between the stockholders, are they not, as to who the directors shall be?

Answer. Well, so far as I was concerned, when I was the head of the Prairie Oil & Gas Co. as such, I determined it myself, sent out their proxies, and when the stockholders sent me their proxies I voted them, and I never had a suggestion—never in the life of the Prairie Oil & Gas Co. in the 10 years, nearly, that I was the head of it—I never had a suggestion from a stockholder as to who should be elected director until, after the Rockefellers sold some stock to Blair & Co., Blair & Co. asked to have representatives on the board of directors.

Question. The Consolidated now owns, does it not, 51 percent of the stock of the Southwestern Development Co.?

Answer. That is my understanding.

Question. And isn't that 51 percent of the--

Answer. No; I beg your pardon; the Consolidated does not own 51 percent of the Southwestern.

Question. What does it own?

Answer. The Consolidated owns about 51 percent of the Southwestern that the Producers & Refiners formerly owned. Isn't that correct, Mr. Spencer?

Mr. Spencer. They own 51 percent of the stock. Your first answer was correct.

Mr. Fitzpatrick. They do. They got that.

Mr. Wooden. I was just about to follow it up with the second question: That is the same 51 percent that was formerly owned by the Producers & Refiners?

The Witness. Yes, sir; that is it.

By Mr. Wooden:

Question. Acquired as a result of the receiver's sale?

Answer. That is my understanding.

Question. Had the Consolidated or any of its constituents or predecessor companies loaned a considerable sum of money to Producers & Refiners?

Answer. The Prairie Oil & Gas Co. during its lifetime loaned Producers & Refiners considerable money.

Question. Was it somewhere in the neighborhood of \$10,000,000?

Answer. No. I think the loans never amounted to more than three and a half or four million dollars. But P. & R. borrowed \$10,000,000 from the banks, which was guaranteed by the Prairie Oil & Gas Co.

Question. And it was default on those obligations that led to the receivership, was it?

Answer. That is my understanding.

Question. And did Consolidated bid in at the receiver's sale the 51 percent of the stock of Southwestern formerly held by Producers & Refiners at the amount of the indebtedness?

Answer. Now I don't know. My understanding is that they bought that part and other parts of the assets of the Producers & Refiners Corporation at the receiver's sale, but what they bought it with or what they gave for it I

don't know, because I had nothing whatever to do with the proceedings in that receivership. Mr. Spencer can tell you all about that.

Question. The Prairie Oil & Gas Co. at one time controlled, did it not, the Producers & Refiners Corporation?

Answer. Prairie Oil & Gas Co. at one time owned a majority of the stock of the Producers & Refiners Corporation, floating stock, and had among its officers and employees a majority of the board of directors.

Question. What did the Prairie Oil & Gas Co. do with the transactions by which the Southwestern Development Co. purchased the gas reserves, or rather by which the Canadian River Gas Co. purchased the gas reserves, of the Amarillo Oil Co.

Answer. Did the Prairie Oil & Gas Co. have to do with that?

Question. Yes.

Answer. I don't think they did. I think that was purchased by the Amarillo Oil Co., was taken over by the Southwestern.

Question. And sold then to the Canadian River Co.?

Answer. Yes.

Question. Is it your testimony that the Prairie Oil & Gas Co. had nothing to do with the transactions which took place there?

Answer. Those were all carried on through the officers of the P. & R.—Producers & Refiners.

Question. In which the Prairie Oil & Gas Co. had the majority interest?

Answer. I think they did.

Question. What I am getting at is to what extent the officers of Prairie Oil & Gas Co. directed or influenced the course of those negotiations and transactions.

Answer. They participated in the discussions that led up to the conclusion of the transaction and approved it.

Question. And naturally their majority interest was effective in such transactions?

Answer. Oh, well; figure that out for yourself. But we represented the owners of the largest stock interest, we understood the propositions, we favored them as business of the company in which we were interested, and the officers of the company carried them out.

Question. To what extent did the officers of the Prairie Oil & Gas Co. have anything to do with the arrangement by which the contract with the Canadian River Gas Co. for the purchase of gas was negotiated?

Answer. I would say that they do not have very much to do with it.

Question. Then all the more reason for stating just what they had.

Answer. It is my guess that you have been hearing a lot of testimony about the volume of gas that was in it. I have heard some of it this afternoon. And the town of Amarillo was the only place we had to go to sell any of it. We did not know the gas business. The Producers & Refiners people did not have anybody who knew the gas business or had ever had any experience in it. We did not know where to get anybody, and we did not know—we did not want to turn it over to some outsider that we didn't know.

We had very satisfactory and many business relations with the Cities Service, and with the Standard Oil Co., and somebody proposed that they take over the gas management and the financing and understanding of the business, start the way and we would go three ways and find an outside market for that gas. Denver was the first one we thought of, or the first one suggested.

Question. Cities Service had only a 15-percent interest, didn't they, or something like that, in the line?

Answer. Cities Service at that time had a franchise in Denver and a distribution system for manufactured gas.

Question. But they received only 15 percent participation in the Colorado Interstate Gas Co.?

Answer. Yes; 15 percent was their participation.

Question. Standard Oil got 42.5 percent, didn't it?

Answer. Yes.

Question. And Southwestern Development Co., 42.5?

Answer. Yes, sir. That was agreed on, and from there we let the gas people fix the set-up pretty much.

Question. Do I understand that you do not claim to be a gas man at all?

Answer. I certainly do not.

Question. And nobody on the Prairie Oil & Gas board or in the management was a gas man, had ever had any experience in the gas business?

Answer. Mr. Moddy had taken over our gas interests as soon as we found out that we had some in Wyoming and northwest Texas, and he was kind of assigned to specialize in the gas end of it and did.

Question. Were you a member of the board of Producers & Refiners?

Answer. Yes.

Question. Were you an officer?

Answer. No.

Question. Who were the other members of the board of Producers & Refiners that you can recall?

Answer. Well, it has been a long time ago and I only have to speak from memory, but I think Mr. Moody and Mr. Kelsey were both members, and Mr. Frank Kistler for awhile, and his brother for awhile, and a man by the name of Fertig, and I don't know that I can call them all, but Mr. Spencer can give you that?

(Pp. 767-774.)

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Testimony of W. S. FITZPATRICK before Senate Committee on Banking and Currency, Seventy-Third Congress, November 14 to November 22, 1934, Offered by the Commission as Exhibit 289.

Mr. Pecora. Mr. Fitzpatrick, I see you rising to your feet as Mr. Cutler leaves the stand.

Mr. Fitzpatrick. Yes.

Mr. Pecora. You wish to say something to the committee?

Mr. Fitzpatrick. I think I have a better recollection of some things than Mr. Cutler seems to have.

Mr. Pecora. I have not heard what you said, but perhaps if you take the witness stand again we may hear you.

The Chairman. Do you care to make any further statement, Mr. Fitzpatrick?

Mr. Fitzpatrick. Mr. Cutler is mistaken if he says he

never heard of the consolidation until 1932 with Sinclair. I talked to him myself about it.

Mr. Pecora. When for the first time?

Mr. Fitzpatrick. Oh, when it first came up.

Mr. Pecora. Back in 1928?

Mr. Fitzpatrick. In 1928. Mr. Cutler's memory fails him if he says he never heard of my participation in the profits of the Blair syndicate.

Mr. Pecora. Do you mean by the Blair syndicate the original purchasing syndicate of the Sinclair stock?

Mr. Fitzpatrick. Blair. Because I remember distinctly telling Mr. Cutler that these people had been very nice to me and I appreciated it—that they had managed to pay me more out of this than my combined salary the twenty-some years I had been working with the company.

Senator Couzens. What did Mr. Cutler say when he found that you had taken \$300,000 from a competing organization?

Mr. Fitzpatrick. I did not take it from a competing organization. I took it from the bankers, and I thought, and I believe, and I know that the suggestion that I get something—not 10 percent, not \$300,000—I do not believe anybody thought there was \$300,000 in it, or anything like the amount of profit there was in it—but I know that I got the idea from Mr. Cutler that I should have something out of it, or that they would give me something out of it. I know that when I talked to Mr. Martson that Mr. Martson had talked to Mr. Cutler about it or Mr. Cutler had talked to Mr. Martson about it. I know that I would not have done that or anything else and I did not do anything else in connection with this consolidation until it was approved by Mr. Cutler.

Senator Couzens. And yet Mr. Cutler testifies—

Mr. Fitzpatrick (interposing). I do not care what Mr. Cutler testifies about. I say I know Mr. Cutler's memory is not good.

Mr. Pecora. Mr. Fitzpatrick, according to your recollection when did you tell Mr. Cutler for the first time that you had received this \$300,000 from that purchasing syndicate?

Mr. Fitzpatrick. Probably the first time I saw him after I had received it.

Mr. Pecora. That was shortly after April, 1929?

Mr. Fitzpatrick. No. I went West, as I say, shortly after I received it, and was gone several weeks, and the first time I got back to New York I went in to see Mr. Cutler.

Mr. Pecora. Well, within a month or two after you had received it?

Mr. Fitzpatrick. A few months after I received it. Some few months afterwards.

Mr. Pecora. It would appear, Mr. Fitzpatrick, from the facts that have been developed here that the Rockefeller interests had nothing to do with the organization of that purchasing syndicate.

Mr. Fitzpatrick. I understand that is so.

Mr. Pecora. Do you know why Mr. Cutler then should have had any part in any conversations that led to your receiving a share of the profits of that syndicate?

Mr. Fitzpatrick. At that time and up to that time everything that had been said to me by Mr. Cutler or anybody else in Mr. Rockefeller's office, or by Mr. Rockefeller himself, indicated that they were very friendly to me, and that everything I had done in connection with the management of the Prairie Co. had their approval. Down to this day there has only been one criticism, and I think that was removed. Now, I believe, as I said this morning, that they were very friendly to me. And I believe that they—I knew that they knew something of my financial condition. And I believed that they wanted these people to do something for my benefit. I wondered then and have ever since why if they felt that way they asked somebody else to do it instead of doing it themselves.

Mr. Pecora. You have not found an answer to that?

Mr. Fitzpatrick. I have not found an answer to it!

Senator Couzens. You did not get an answer today, either, did you?

—Mr. Fitzpatrick. I did not get an answer today. And I am astonished more than you gentlemen are.

Now, another proposition. It has been intimated by this committee that this participation of mine was kept secret. It was not kept secret. It figured in my income taxes the year I received it. It was talked over with my associates in the Prairie Oil & Gas Co. and approved by them. They understood it then, they understand it now, and at all times have understood it.

Senator Couzens. How do you account for this conflicting testimony then?

Mr. Fitzpatrick. I am not able to account for it. If I could account for it I would not be here disputing it.

Mr. Pecora. Mr. Fitzpatrick, how do you account for Mr. Arthur W. Cutten, Mr. Harry F. Sinclair, and Mr. Albert H. Wiggin having apparently been ignorant of the reason why you received this \$300,000 from the purchasing syndicate of which they were members?

Mr. Fitzpatrick. I do not account for it. I never had any conversation with any of them about it, and I know nothing about it. It was fixed up by Blair & Co., and I supposed everything was fixed up right and that everybody knew it and that it was satisfactory all around. I got the money from them. I did not ask them how much it was. I never asked for an accounting. I never asked for a statement as to the operations of the syndicate. I never asked for anything. And I got it. And I got into this thing here at the suggestion of Mr. Cutler and Mr. Marston, and whatever you gentlemen see fit to believe, whatever the public may believe, if it is to my detriment it is too bad. But I am going to see that the truth is laid before you.

Mr. Pecora. That is all we want.

Mr. Fitzpatrick. I do not care who disputes it. Mr. Cutler is an important man. Mr. Cutler represents perhaps the most powerful influence in this country—possibly in the

world. I served them for twenty-some years, and I have never heard anything fall from the lips of anybody connected with the Rockefeller organization, until I heard this testimony, that impaired my respect for or confidence in them.

Now when I told Mr. Cutler that these people have been very good to me and I appreciated it—in fact they had carried me in this matter and made me more money than my combined salary, or approximately the amount of my combined salary for the years that I have been with the Prairie Oil & Gas Co., I don't remember why it was, but he said "I would not say anything about that." That is the first intimation I ever had or the first time it ever occurred to me that anybody might think there was anything wrong about my taking that money from Blair & Co.

Mr. Pecora. Who said to you you shouldn't say anything about it?

Mr. Fitzpatrick. Mr. Cutler.

Mr. Pecora. That was when you first told him that you had received that money?

Mr. Fitzpatrick. Yes, sir. When I told him how much it was.

Mr. Pecora. Now, when you were out in Excelsior Springs some 2 weeks ago with Mr. Sinclair were you surprised to know that he was ignorant of the reasons why you got that \$300,000 out of that purchasing syndicate's profits?

Mr. Fitzpatrick. I naturally was. Naturally was surprised.

Mr. Pecora. His ignorance of the fact seemed genuine to you, did it?

Mr. Fitzpatrick. It did. It did. It did. Because I thought I could understand how he might not have known all about it. He said he did not. He asked me and I told him the story about Mr. Cutler and my conversation with Mr. Cutler and Mr. Marston.

Mr. Pecora. Now, Mr. Fitzpatrick, you exchanged your shares of Prairie Oil & Gas Co. for shares of the Sinclair Co.—

Mr. Fitzpatrick. Yes.

Mr. Pecora (continuing). Some time in 1929?

Mr. Fitzpatrick. 1928 we made the arrangement.

Mr. Pecora. And it was consummated in February 1929?

Mr. Fitzpatrick. Yes, sir.

Mr. Pecora. Did you at that time in your transaction part with all your holdings of Prairie Oil?

Mr. Fitzpatrick. No.

Mr. Pecora. A substantial part of them?

Mr. Fitzpatrick. A substantial part of them, yes.

Mr. Pecora. And you exchanged them for shares of the common stock of the Sinclair Co.?

Mr. Fitzpatrick. Yes.

Mr. Pecora. Which then was more or less of a competing company?

Mr. Fitzpatrick. Well, in a measure. But the general discussion that was going on indicated that the Sinclair contemplated a dividend of \$3 a share. I knew that that was all that the Prairie Oil could pay, if they could pay that much. I knew that I would receive, pending the further negotiations for the consolidation, dividends on 5 shares at \$3 a share instead of on 3 shares of Prairie at \$3 a share. I wanted those additional dividends. I got them. And I paid my income tax on that additional income.

Senator Couzens. Did Mr. Rockefeller know that you exchanged the stock in a corporation in which he had a big interest for stock in a competing company?

Mr. Fitzpatrick. I am quite sure Mr. Rockefeller did not know it.

Senator Couzens. Did Mr. Cutler know it?

Mr. Fitzpatrick. I am quite sure that Mr. Cutler did not know it. I did not tell either one of them. It never occurred to me that it was any of their business.

Mr. Pecora. Did you tell any of the directors of the Prairie Oil & Gas Co.?

Mr. Fitzpatrick. Oh, yes. I told the directors of the Prairie Oil & Gas Co., and several of the boys in both companies made the same exchange, at the same time and in the same way.

Mr. Pecora. Were the Rockefeller interests represented on the board of directors of the Prairie Oil & Gas Co. at that time?

Mr. Fitzpatrick. Well, they were represented; yes. I represented the Rockefellers more thoroughly than I did anybody else, because there was no question of policy that I remember ever having come up that I did not try to find out whether they approved it or not. Now, we had those negotiations with Mr. Sinclair and his people all through 1929, and finally we broke up. In 1930 we were unable to get together. And there were other complications. Mr. Sinclair was about to sell or get rid of his interest in another pipe line. We waited for that. He did it. After he did it and about the time he did it we began to hear rumors of the building of the Ajax Pipe Line, and the Ajax Pipe Line took away from us—and this acquisition of full ownership of the pipe line by the Indiana company, took away from us about 70,000 to 75,000 barrels a day of business. The building of the Ajax Pipe Line took away about 20,000 barrels a day of the New Jersey company. And at the same time it took away about 6,000 barrels as I remember it of the Pure Oil Co., that went into the Ajax Pipe Line. And it took away about 40,000 barrels a day that was going to the Standard Oil Co. of Ohio—

Senator Couzens (interposing): After you had made your exchange or purchase—

Mr. Fitzpatrick (continuing). That made a difference in the set-up, in the division or value of the property.

Mr. Pecora. At the time you effected that exchange of your holdings of Prairie Oil for shares of the Sinclair Company, on the basis of 5 shares of Sinclair stock for 3 shares of Prairie Oil stock, negotiations had already been in progress looking to a general consolidation of the two companies, had there not?

Mr. Fitzpatrick. They were in the preliminary stages.

Mr. Pecora. Yes. Now, at any time in those preliminary stages, or particularly at the time when you effected the exchange of your shares of Prairie Oil on the basis of 5 to 3 for shares of Sinclair Oil, did the Sinclair people indicate that they would be willing to make the same kind of exchange with the other stockholders of the Prairie Oil?

Mr. Fitzpatrick. Yes, with the other officers.

Mr. Pecora. Oh. Only with the officers, and not with the general body of the stockholders?

Mr. Fitzpatrick. No; and that was limited to 20,000 shares.

Mr. Pecora. And that offer was held out only to the officers of the Prairie Oil & Gas Co.?

Mr. Fitzpatrick. Yes, sir.

Mr. Pecora. Did other officers beside yourself avail themselves of the offer?

Mr. Fitzpatrick. Yes; they did.

Mr. Pecora. All of them?

Mr. Fitzpatrick. Not all of them.

Mr. Pecora. Which of them did so?

Mr. Fitzpatrick. Mr. Moody, Mr. Kelsey, and I think Mr. Wilhelm. I am not sure whether Mr. Wilhelm did or not, but there were several that did.

Mr. Pecora. Was the fact of such exchanges, made known by you or any other officers of the Prairie Oil & Gas Co. to the stockholders at the time that the negotiations were finally concluded on a share-for-share basis?

Mr. Fitzpatrick. We didn't send out any letter to the stockholders; no.

Mr. Pecora. Well, did you indicate the fact to the stockholders of the company in any form?

Mr. Fitzpatrick. But there was no effort on anybody's part so far as I know to conceal it.

Mr. Pecora. But was the information given to the stockholders?

Mr. Fitzpatrick. I don't know.

Mr. Pecora. Was there anything affirmatively done, in other words?

Mr. Fitzpatrick. I don't know.

Mr. Pecora. I mean to inform the stockholders of the deal that the officers had obtained for themselves.

Mr. Fitzpatrick. I don't know.

Mr. Pecora. What was that answer?

Mr. Fitzpatrick. I don't know.

Senator Couzens. Doesn't it appear to you, Mr. Fitzpatrick, that while doing this you were really scuttling your ship with the Prairie Oil & Gas Co.?

Mr. Fitzpatrick. It did not.

Senator Couzens. It would seem to me that if I owned 15 percent of a company and my officers were exchanging their stock for stock of a competing company I would consider that my ship was being scuttled.

(Pp. 3357-3361.)

Mr. Fitzpatrick. I came to the Prairie Oil & Gas Co. in 1908, and continued in one capacity or another with the Prairie Oil & Gas Co. down to the time that it was taken over by the Consolidated.

Mr. Pecora. Were you during any part of that period an officer or director of any other corporation engaged in any phase of the oil business?

Mr. Fitzpatrick. None except a few smaller concerns that were largely owned or that the Prairie Oil & Gas Co. had a large interest in.

Mr. Pecora. Was the Prairie Pipe Line Co. one of them?

Mr. Fitzpatrick. No.

Mr. Pecora. Were you connected with that corporation?

Mr. Fitzpatrick. Not officially.

Mr. Pecora. Were you through any community of interest between the corporations that you were connected with in that corporation?

Mr. Fitzpatrick. No; except that the owners of about 60 percent of the stock in one company owned stock in the other; and in one company, I don't know which one it was, it was 65 percent, about.

Senator Couzens. Were the Rockefellers interested in Prairie Co.?

Mr. Fitzpatrick. Both companies.

Senator Couzens. Both the pipe line and the oil company?

Mr. Fitzpatrick. Yes, sir.

Senator Couzens. Did they have a controlling interest?

Mr. Fitzpatrick. No, sir.

Senator Couzens. Do you know the percentage of interest which they had?

Mr. Fitzpatrick. Only approximately. I think they had about 22 or 23 percent of the Oil and about 20 percent of the Pipe.

Mr. Pecora. Does not that represent a management control for all practical purposes?

Mr. Fitzpatrick. I do not know what you mean by "practical purposes", Mr. Pecora.

Mr. Pecora. For purposes of operation of the company.

Mr. Fitzpatrick. The stock represented by the Rockefellers and their friends, the trusts and people that had been formerly associated with the old gentleman in years gone by, or their relatives, had, as I remember it, something like 40 or 42 percent.

Senator Couzens. Who represented the Rockefellers in the management?

Mr. Fitzpatrick. Well, I don't know that anybody represented the Rockefellers exactly. I came as near it; I presume, as anybody.

Senator Couzens: You were representing them on the board of directors?

Mr. Fitzpatrick. I was always elected on the board of directors with the proxies that they sent in and the others.

Senator Couzens. So you were always looked upon as a Rockefeller man?

Mr. Fitzpatrick. I could not say how I was looked upon.

Senator Couzens. I mean, the testimony indicated yesterday that you had been with the Rockefellers very many years.

Mr. Fitzpatrick. I went with the Prairie Oil & Gas Co. in 1908. I was first employed as an attorney in a suit that was pending in Kansas, brought by the attorney general to forfeit the charter of the Prairie Oil & Gas Co. and the Standard Oil Co. of Kansas, and withdraw or cancel the permit of the Standard Oil Co. of Indiana to do business in the State of Kansas under the antitrust laws of that State. After some 6, maybe 9, months in the progress of that case I was invited to devote my entire time to the Prairie Oil & Gas Co. as its general counsel.

(Pp. 3307-3308.)

My offer there—however, before my offer there, I will distribute photostatic copies of it to counsel. The original is available for counsel.

The Trial Examiner: Do you wish to have this marked for identification, Mr. March?

Mr. March: Yes, sir.

The Trial Examiner: It will be marked for identification as Exhibit No. 289.

(Exhibit 289 marked for identification.)

Mr. March: I offer that testimony of William Samuel Fitzpatrick, Vice President of Executive Committee, Consolidated Oil Company, beginning on Page 3308 and extending through Page 3323; there is the testimony of Elisha Walker, beginning on Page 3323—I don't want to include that as it is irrelevant to this. That testimony also includes 3349 and I don't want to include that testimony—and there

is the testimony of Bertram Cutler, Rockefeller Financial Adviser, Page 3348-3358; then the resumed testimony of William Samuel Fitzpatrick, Vice Chairman of the Executive Committee of Consolidated Oil Company, Page 3357-3362. There is a small matter on Page 3362 regarding the testimony of Harry F. Sinclair and I do not wish to include that.

Mr. Examiner, to the Commission's counsel's way of thinking, this is the most important testimony offered and I want to make my statement as to its relevancy. It is one thing that shows the members of the Rockefeller family had large stockholdings in the Prairie Oil & Gas Company which controlled the Producers and Refiners Corporation which controlled Southwestern Development Company which controlled Canadian River Gas Company and Amarillo Oil Company.

(Vol. XCVIII, pp. 15,184-15,185.)

We have here certain testimony of a former officer of Prairie Oil & Gas Company and a former officer of Consolidated Oil Corporation at certain hearings before the Committee on Banking and Currency of the United States Senate. The testimony was taken in 1933.

Now, for the purpose of these hearings, the purpose of the investigations as shown by the resolutions on the facing sheet of Exhibit No. 289 is: "To investigate practices of stock exchanges with respect to the buying and selling and the borrowing and lending of listed securities." That is Senate Resolution No. 84.

Senate Resolution 56 is: "A resolution to investigate the matter of banking operations and practices, the issuance and sale of securities, and the trading therein."

Now, in connection with those investigations there were certain syndicate operations in New York that came under an examination by this Committee. If the Examiner had time to read this testimony he would see that it is all based upon those stock transactions. Here and there through these many pages Mr. March finds the name "Rockefeller" occasionally, which is sufficient in itself to make the whole

thing relevant and material and competent for your consideration; wherever he can find the name "Rockefeller" and the name "Prairie Oil & Gas Company" and "Standard Oil Company (New Jersey)" on the same pages, there shouldn't be any question about it, there really shouldn't.

However, I think the Examiner will agree with us first, certainly that there were no issues involved there in that hearing that bear any resemblance to what we have under consideration here. Certainly we don't have the remotest semblance of identity of parties, and certainly I think counsel will agree as far as Mr. Fitzpatrick is concerned no one had a right to cross-examine him except the Committee's counsel; therefore, I object to the exhibit in its entirety because I think it is irrelevant, immaterial, and certainly incompetent for the reasons I have stated.

(Vol. XCVIII, pp. 15186-15187.)

* * * * *

Not only that, but this: As I said before, it is one thing to prove that the Rockefellers had a substantial stock ownership in Prairie Oil & Gas Company, but it is another thing to prove they exercised control. The reason it is the whole heart of this and so vital is because unless I can prove that when they sat around the table in 1927, and made their original agreement between the Cities Service Company, Southwestern Development and Standard Oil Company (N. J.), that the Standard Oil Company (N. J.) not only had the power—the same person controlled the Standard Oil Company (N. J.), the Rockefellers, the details as to who they were and everything about it, unless I can show those same persons not only had sufficient stock to have considerable influence and Prairie Oil & Gas Company, and, therefore, Southwestern Development Company—unless I can show further they did exercise control over the Prairie Oil & Gas Company, my case is not as strong as it should be.

As far as this testimony is concerned, Mr. Examiner, to be absolutely frank with the Examiner here, I think it relevant to show just what the situation was. The situation here involved was the payment of a hundred or so thousand dollars to Mr. Fitzpatrick, the Chief Executive Officer for

years of Prairie Oil & Gas Company during the time the contracts were entered into for the Denver line which Prairie Oil & Gas Company controlled and which controls Southwestern Development Company, which controls Canadian River Gas Company.

I think all I need here is to show this from Pages 3358, 3359, 3360, down to the bottom of Page 3360: To indicate the relevancy and the importance of this, on Page 3360 I direct the Examiner's attention to where Mr. Pecora asked Mr. Fitzpatrick:

"Were the Rockefeller interests represented on the Board of Directors of the Prairie Oil & Gas Company at that time?"

Mr. Fitzpatrick stated: "Well, they were represented; yes. I represented the Rockefellers more thoroughly than I did anybody else, because there was no question of the policy that I remember ever having come up that I did not try to find out whether they approved it or not."

Then on Page 3358, during the cross examination, Mr. Pecora asked Mr. Fitzpatrick:

"Do you know why Mr. Cutler then should have had any part in any conversations that led to your receiving a share of the profits of that syndicate?"

Mr. Fitzpatrick stated: "At that time and up to that time everything that had been said to me by Mr. Cutler or anybody else in Mr. Rockefeller's office, or by Mr. Rockefeller himself, indicated that they were very friendly to me, and that everything I had done in connection with the management of the Prairie Company had their approval."

(Vol. XCVIII, pp. 15,188-15,190.)

The Trial Examiner: Have you anything further at this time, Mr. Dougherty?

Mr. Dougherty: No, Mr. Examiner, we have not.

The Trial Examiner: Mr. March, I believe the Examiner is in position now to take up this exhibit No. 289, to which you referred previously.

Mr. March: Yes. We discussed that previously and the Examiner deferred ruling until coming to Washington.

Commission Counsel already made a statement with regard to that exhibit No. 289 in the testimony of Mr. Fitzpatrick and Mr. Cutler as reported in the hearings before the Pecora Committee or, I should say, before the Committee on Banking and Currency of the United States Senate. We consider this exhibit 289 the most important piece of corporate evidence that we have tendered as an exhibit in this case and wish at this time to renew our offer of the exhibit.

Mr. Spencer: Mr. Examiner, I think I have heretofore stated my objections to this exhibit somewhat at length. I do not think it necessary at this time to repeat anything that I said before.

I will say this, that I think Counsel for the Commission evidences a distinct inferiority complex when he says this is the most important piece of corporate evidence that he has submitted in this case.

The Trial Examiner: I have gone over this exhibit No. 289 rather carefully and I have read the entire matter, and I am frank to state, Mr. March, that I see very little, if anything, in this exhibit that pertains to this proceeding.

Mr. March: Mr. Examiner, one of the most vital things is this five million dollars, and here is positive proof that the then executive officer of the Southwestern Development Company sat on the opposite side of the table from Mr. Christy Payne, and everything that he did was carried out pursuant to the instructions of Mr. Cutler with the approval of the Rockefeller families, who controlled the dominant interest in the Standard Oil Company of New Jersey.

If that is not important, then the testimony of Mr. Christy Payne is not important, nor that of Mr. Lerch. Our whole corporate case involving this five million dollars is important. We rather seriously consider this the most important evidence we have to offer. It is one thing to show stock ownership, which we have shown, and to show beyond the shadow of a doubt that the chief executive officer of the

Southwestern Development Company, or the parent Company of the Southwestern Development Company, Prairie Oil and Gas Company, back in 1927 and on through 1932 was working directly under the supervision and direction of the Rockefellers, is a very, very vital, involving this five million dollar transaction, which is one of the most vital issues in this entire case.

As I said before, I can limit this offer to approximately three pages. But, as I stated, I believe all of it is important. And at the time Mr. Dougherty stated that he would rather that the whole story go in if any of it went in. That is one reason why I offer Mr. Cutler's testimony, so as to have the entire story in with regard to this particular transaction.

I believe that was Mr. Spencer's statement.

Mr. Spencer: I stated that.

Mr. Examiner, the trouble is that none of the testimony that he has here that he wants to put in does anywhere near what he says it does. That is the only difficulty.

The Trial Examiner: I was about to remark that Mr. March's statement, of course, includes the interpretation placed upon this particular piece of evidence. As I say, the thing that I got out of this particular document was the fact that someone was trying to run down some three hundred thousand dollars. And what connection that has with this rate case I was unable to see.

However, the Examiner is going to be somewhat lenient here, Mr. March. The Examiner will rule favorably. In other words, the Examiner will grant the admission of this document, exhibit 289, for whatever the testimony may be worth, and over the objection of counsel for the respondent.

(The document referred to was received in evidence and marked exhibit No. 289.)

The Commission introduced as Exhibit 249 part of the testimony before the Securities and Exchange Commission May 1, 1939, Docket No. 43-195 "In the Matter of Public Service Company of Colorado" of the witness Harry D. Hancock, who was one of Cities Service's negotiators in these conferences with Standard and Southwestern. Commission's counsel in the instant case offered this testimony to show as he stated, Cities Service's side of these negotiations (Vol. LXXXIV, p. 12670). Hancock is now and was at the time of his testimony before the Securities and Exchange Commission, president and chief engineer of Gas Advisers, Inc., a mutual service company serving subsidiary companies of Cities Service (Exhibit 249, p. 451). At the time of the negotiations, however, he was chief engineer of Gas Service Company at Kansas City, Missouri, a Cities Service subsidiary. He was lent to Cities Service to "engage in these negotiations and studies" (Ex. 249, pp. 470, 471). H. O. Caster and J. D. Creveling also represented Cities Service (Exhibit 249, p. 473). And from time to time Messrs. Board, Fowler and Loiseau of Public Service sat in (Ex. 249, p. 477).

Testimony of HARRY D. HANCOCK before the Securities and Exchange Commission, May 1, 1939, in the Matter of Public Service Company of Colorado—Exhibit 249.

HARRY D. HANCOCK, a witness produced for and on behalf of the Declarant, having been first duly sworn by the Examiner, was examined and testified as follows:

Direct Examination.

By Mr. Burns:

Q: Please state your name.

A: Harry D. Hancock.

Q: Mr. Hancock, what is your occupation?

A: I am employed by Gas Advisers, Inc., of New York City, as President and Engineer.

Q: Have you specialized in any particular branch of the engineering profession?

A: Yes, gas engineering, for the past 27 years.

Q: Gas Advisers, Inc. is a mutual service company, is it not?

A: It is.

Q: Serving certain of the subsidiaries in the Cities Service system?

A: That is correct.

Q: How long have you been associated with Cities Service Company or any of its subsidiaries?

A: Since 1912.

Q: When, if you know, did the subsidiaries of Cities Service Company first begin to engage actively in the natural gas business?

A: In a substantial way in 1912.

Q: And that was in the Mid-Continent field?

A: That is correct.

Q: You have been engaged in that branch of the activity of the system substantially all of that time?

A: No, for the first seven or eight years I was engaged in the manufactured gas branch of the business (and since that time in the natural gas branch of the business.

Q: And when you entered the natural gas branch of the business where were your offices first located?

A: In Bartlesville, Oklahoma.

Q: In the Mid-Continent field?

A: In the Mid-Continent field.

Q: When would you say, Mr. Hanceek, the Amarillo field first began to attract people in the gas industry as a potential gas supply?

A: The field was discovered in 1918 and began to attract attention as a potential reserve for large volumes of gas in the early 20's. By that I mean 1922.

Q: When did it become evident it was a phenomenally large gas field?

A: The interest proceeded to increase year by year as additional drilling was done and by 1925 and 1926 the potentialities of the field were beginning to be widely recognized.

Q: Did the gas engineers in the Cities Service organiza-

tion make a study of that field for the purpose of its business?

A. Yes.

Q. Were you engaged in that study to any extent?

A. Yes.

Q. In the first studies of that field, what markets had they particularly in mind?

A. In the studies as early as 1922, the markets under consideration were of a local nature in what might be called the Amarillo area for power plants and other industrial uses.

Q. Later on were markets to the east taken into account as available to be supplied with Amarillo gas?

A. They were concurrently with that time and proceeding from then on, markets such as various cities in Colorado, Kansas, Missouri, Nebraska and Illinois, which were considered as potential markets for Texas Panhandle gas.

Q. Was consideration given at an early date to the possibility of bringing gas into as far as Kansas City?

A. It was.

Q. By connecting up with the system already serving that city?

A. That is correct.

Q. And eventually a line was built to Wichita to connect with the system which supplied Kansas City, Missouri?

A. That is correct, in 1927.

Q. And studies were projected also as to the availability of that gas for the Chicago market?

A. That is correct.

Q. And Omaha?

A. That is correct.

Q. Tell me about the considerations that were given to the possibility of that gas being brought to Denver?

A. Preliminary consideration was given during the period from 1922 on. Serious consideration began in 1925 and 1926. That was both by the Cities Service Company, organization and others.

Q. What are some of the factors involved in the study of bringing natural gas from a fairly remote field to a market for sale?

A. It is important that the entire project be conceived along sound engineering and economic lines, that the in-

vestment be the minimum which the construction work can be carried out at with due regard to service, and the quantities to be transported must be carefully analyzed and studied to secure the proper balance between the supply and the market outlets to be sure that a line of sufficient capacity is built at the outset because it is more economical to construct a single large line than to later construct parallel lines; to be sure that the line is not likewise over-built beyond the capacity of the market to absorb the outlet. As a general proposition natural gas to be transported long distances must be handled in comparatively large volumes. It would not be feasible to build long small lines.

Q. Well, I presume that in these studies it is contemplated that to develop a market it is necessary to displace other fuels currently being used, is that correct?

A. That is correct, except to the extent industrial plants may be attracted into the community by the availability of a natural gas supply.

Q. But as far as the existing industries and the existing possible outlets, the fuel then being used must be displaced, is that correct?

A. That is correct.

Q. So that for the kitchen range, let us say the manufactured gas supply, if there is manufactured gas, must be displaced?

A. That is correct.

Q. And for house heating, coal or oil must be displaced. Is that true?

A. Coal, oil, coke, wood, or whatever may have been used.

Q. And as far as the existing industries are concerned, if they are to be attracted so they will connect with the lines, the fuel they are using has to be displaced by gas?

A. That is right.

Q. And that is all involved in the various studies that have to be made?

A. It was.

Q. And the house heating also is obviously a seasonal load, is it not?

A. Yes, it is very seasonal in its character and not only seasonal in its character, but varies widely from year to year.

Q. Can you tell me what you found with regard to the Denver market, the Colorado market in your preliminary studies as to the feasibility of building a line to Denver?

A. Generally speaking the city of Denver is a city of homes with a high percentage of ownership by the occupants of those homes as compared with other cities, with a relatively high percentage of people living in single, or two or three family houses, as opposed to many other cities where a large percentage live in large apartment buildings. In other words, the city of Denver offers some opportunities and attraction to the development of house heating business. On the other hand, the city of Denver did not offer as attractive industrial opportunities as do other cities, particularly in the East.

Q. Then would you say there was not a large market for the sale of gas for industrial uses in Denver?

A. Comparatively speaking that is true.

Q. What would you say about other sections of Colorado? I mean eastern Colorado?

A. The next largest city in Colorado is Pueblo, and at that location there is a very large steel plant, known as the Colorado Fuel and Iron Company, which manufactures steel rails for railroads and other steel shapes, and on account of that, Pueblo has a much larger percentage of industrial opportunity compared to domestic opportunity.

Q. The Colorado Fuel and Iron Company is what is generally known as a Rockefeller project?

A. That is my understanding.

Q. What fuel were they using?

A. They were using coal.

Q. Was it coal produced from their own coal mines?

A. That is my information.

Q. Did you make any attempt to sound out that company as to the possibility of it being a prospective gas user?

A. We did.

Q. And with what result?

A. We were unable to arrange a satisfactory contract with that company for its fuel business.

Q. And was one of the reasons advanced that they were mining and utilizing their own coal as fuel?

A. That was I think the reason advanced.

Q. When did you first see that others were thinking about building a gas line to Denver?

A. The first definite information was early in 1926.

Q. Whose gas supply was being talked of for that purpose?

A. The promoters of the line to which I refer stated they were in a position to contract for the gas reserves owned by the Southwestern Development Company in the Texas Panhandle field.

Q. That was a subsidiary of the Prairie Oil and Gas at that time?

A. It was partly owned by Prairie Oil and Gas, according to my information.

Q. And the rest by Mission Oil Company?

A. Substantially all the rest by Mission Oil Company.

Q. But it was also known as a Rockefeller project?

A. That is right.

Q. Were negotiations undertaken at that time to utilize this gas supply to bring it to Denver?

A. Yes.

Q. Did the promoters come to Cities Service Company with it and suggest a joint enterprise?

A. The promoters did come to Cities Service Company.

Q. Where, in the Amarillo field, was that block of acreage owned by the Prairie Oil and Gas Company?

A. In the extreme western end of the field.

Q. So it was the end of the field nearest to Denver, is that correct?

A. That is correct.

Q. Did those negotiations come to a head because of an agreement or contract to build a line?

A. They came to a tentative agreement contingent on the ability of the promoters to finance their enterprise, but it later developed that they were unable to finance their enterprise.

Q. What was the next thing that happened with regard to the proposed line to Denver?

A. Concurrently with the negotiations which I have just referred to, the Southwestern Development Company, and the interests associated with the Southwestern Development Company, began to discuss with Cities Service Company the possibility of building a line to Denver. Concurrently with

that step Cities Service Company was contemplating building or forming a company to build a line to various cities and industries in Colorado.

The Southwestern Development Company arranged for the Standard Oil Company of New Jersey to join with it in the negotiations and discussions, and from that time, that is, about the middle of 1926, there were these three interests contemplating the building of a line to Denver. By the three interests, I mean the Southwestern Development Company, Standard Oil Company of New Jersey, and the Cities Service Company, each were contemplating the building of a line to Denver, or joining in the building of a line to Denver and other cities in Colorado.

Q. And those negotiations progressed during 1926?

A. Yes.

Q. And 1927?

A. Yes.

Q. And during that time was Cities Service Company engaged in the project of running a line east to Wichita?

A. That is correct. In 1927 the necessary preliminary work was completed, acreage was acquired, and a 20-inch line, which was the first major line from the Texas Panhandle Field, was constructed and completed on about the last day of 1927, completed as far as Wichita, Kansas, where it tied in with the existing transportation system.

Q. Now returning to the negotiations for the line west to Colorado. You say these negotiations were carried on in 1926 and the early part of 1927?

A. That is correct.

Q. And did it appear that the Southwestern Development Company interests or the Standard Oil of New Jersey interests were in a position to procure the Colorado Fuel & Iron Company as a customer where others might not be able to do so?

A. That was one of the important developments which did take place. Those two interests advanced so that they were in a position to negotiate a satisfactory contract, appeared to be in that position, and ultimately were able to negotiate a satisfactory contract with the Colorado Fuel & Oil Company.

Q. In other words they were able to supply a factor

which would support the line which possibly no one else could supply as far as outlet for gas is concerned?

A. That is correct.

Q. That industrial load would complement the load that might be developed in any city served by the line?

A. That is true. It would enable the line to be operated at a higher load factor and more economically than it would have been done without such a substantial industrial load.

Q. Mr. Hancock, you have testified that you have been engaged in the manufactured gas business and also in the natural gas business. Can you tell us the fundamental or essential differences in operating those two branches of the business?

A. The differences arise from a different set of economics and costs in the two branches of the business, also involve a different conception of volume of business, and means by which those volumes can be obtained. As stated previously, the natural gas business is fundamentally one of large volume at somewhat lower prices per unit of heating value than obtains in the manufactured gas business. Generally speaking, the manufactured gas business involves the sale of gas for cooking, and water heating, and small commercial and industrial operations.

Whereas, the natural gas business includes those which I have just mentioned as well as gas sales for house heating and practically all commercial and industrial operations.

Q. Well, am I right in stating that one of the essential problems of a gas engineer in the manufactured gas business is to devote constant attention to keeping the costs of keeping manufactured gas down as low as possible? Is that one of his primary problems?

A. That is correct.

Q. And certain marketing fields, such as you have mentioned, house heating and large industrial operations that he can't even reach with manufactured gas, is that correct?

A. That is correct.

Q. So that a public utility man engaged in the manufactured business has had no experience in building up those large loads. Is that true?

A. That is true, and has been very forcibly brought to

my attention and the attention of others in various localities.

Q. You have had experience, have you, in bringing gas to a community replacing manufactured gas and found difficulty with the local management in building up an outlet for the gas?

A. Yes.

Q. An the pipe line company has to jump in and augment the efforts of the local management to show them how local loads are built up?

A. That is the endeavor of the pipe line company, to do that.

Q. Well, now, in these negotiations that we have been discussing, it finally ended in an agreement, did it not?

A. It did. A preliminary agreement, subject to certain conditions and developments.

Q. Was made?

A. Yes.

Q. And did that agreement provide, among other things, that the Cities Service Company was to receive 15 per cent of the stock of the company which was to build the line?

A. It did.

Q. Was the Cities Service Company to contribute to the cost of the line, the cost of building the line?

A. No.

Q. Had there been any discussions during the negotiations of the possibility of Cities Service Company having an investment interest in the line and paying a part of the cost of building the line? There had been that discussion?

A. Yes, sir.

Q. But that was dropped in the final agreement?

A. That is right. The discussions involved the purchase by Cities Service Company, or a company which would be formed for the purpose, of a larger percentage of common stock.

Q. Well, can you tell me something of the considerations which were an inducing factor whereby the participants in this line allowed Cities Service Company a 15 per cent stock interest?

A. I can tell you what was in my mind during the negotiations, and what I believe to be in the minds of others participating in those negotiations from the conversations and discussions.

The Cities Service Company, as previously stated, contemplated the building of a line, of a wholly-owned line, in Colorado. It felt that if it did not build a wholly-owned line that it was entitled to some participation in a joint enterprise. Cities Service Company further felt that it was in a position to render substantial services to the pipe line company and had rendered such services in conceiving or assisting in the conception of a pipe line along sound engineering and economic lines.

Cities Service Company also had, through Henry L. Dougherty & Company, its fiscal agent, a large and competent staff of natural gas engineers and salesmen, and other individuals who are essential and useful to the building and successful operation of such a project. It felt that the services of these men would be distinctly advantageous to a jointly owned pipe line. The hazard of building a pipe line of this character was very largely one of markets. By the time the line was undertaken the availability of the gas supply was very largely assured for a reasonable number of years.

There were substantial engineering problems in the design and construction of a line, but all of these factors which I have just named were not as important as the uncertainty of market development.

Through this stock ownership of Cities Service Company in the Public Service Company of Colorado and the Pueblo Gas and Fuel Company, it was also in a position to lay before the Boards of Directors and management of these two companies plans for the stimulation of gas load building.

Q. Were the partners in the proposed line interested in seeing to it that the organization of the Cities Service Company, the natural gas organization, be kept available for market building in Colorado to dispose of the output of this line to Colorado?

A. They were in two directions. First, that the Talent of the Cities Service Company organization through Henry L. Dougherty and Company, its fiscal agent, be made available to the pipe line company for such marketing plans as deemed advisable in each of the localities and also that

the direct services as required by the two distributing companies just named be made available to those distributing companies. That is, in the execution of the local plant for load stimulation and building.

Q. Was there also an engineering problem at the very beginning of gas service involved in the change-over of the distribution system from manufactured gas to natural gas?

A. There was.

Q. In the contract which was eventually executed between Public Service Company of Colorado and Colorado Interstate Gas Company, is this interest of the partners in the line that the Cities Service staff assist in the load building of the venture evidenced?

A. It is.

Q. Have you the contract with you?

A. No, sir; I haven't the contract before me, but I do have it in mind. It is contained in the contract between the Colorado Interstate Gas Company and the Public Service Company of Colorado under date of January 3, 1928.

Q. Now, while we are looking for that contract, may I say this, that there were several inducing factors as a result of which Cities Service Company acquired a 15 per cent interest in this line from the proposed partners in the venture and one was the fact they had been in on the study of the possible line from its earliest inception; secondly, that they had made substantial contributions to the venture in their surveys and studies which were made; and third, the participants in the enterprise wanted to be sure that the Cities Service Natural Gas organization would get behind the load building for the line on the market particularly in Denver and Pueblo?

A. Yes.

Q. As well as to assist in the mechanical job of change-over from artificial to natural gas. Are those some of the factors which resulted in Cities Service acquiring a 15 per cent interest of the line?

A. What you have just said is a fair summary of those factors.

Q. Is Section 8 of the agreement between Colorado Interstate Gas Company and Public Service Company in Colorado, the section you referred to?

A. It is.

Q. Is there anything further that you can think of to add to your testimony that bears upon this question we are discussing?

A. I might say on the latter point that the other two participants in the enterprise, Southwestern Development Company and Standard Oil Company of New Jersey, insisted and demanded a minimum requirement in the contract obligating Public Service Company to take or pay for certain specific volume of gas per day or per year. The Public Service Company was unwilling to enter into that obligation and the other two participants in the industry were only willing to forego the insertion of that requirement in view of the arrangement described in Section 8 of the contract providing for a method by which the consumption and sale of gas would be stimulated.

Mr. Burns: I have no further questions to ask of this witness.

Cross Examination.

By Mr. Davis:

Q. Mr. Hancock, in 1926 and 1927, during the period that you conducted these negotiations with the Southwestern Development Company and the Standard Oil Company of New Jersey, with what firm were you connected at that time?

A. In 1926 I was chief engineer of the Gas Service Company at Kansas City, Missouri and was delegated or borrowed, you might put it to go to Denver and engage in these negotiations and studies.

Q. Right there, was Gas Service Company then a mutual service company?

Mr. Burns: Gas Service Company is a different company altogether. It is a company engaged in the gas business, distributes gas in Kansas, Oklahoma et cetera, and Gas Advisers, Inc. is a service company. They are two different things.

By Mr. Davis:

Q. You are now President of Gas Advisers, Inc.?

A. President of Gas Advisers, Inc.

Q. At that time, in 1926, you were employed by Gas Service Company?

A. Gas Service Company.

Q. And you were loaned, so-called, to the Public Service Company of Colorado?

A. No, to Cities Service Company.

Q. To Cities Service Company?

A. Which was the owner of Gas Service Company. In 1927 I was employed directly by Henry L. Dougherty and Company, fiscal agents for Cities Service Company as chief engineer of the Natural Gas Department of Henry L. Dougherty and Company. I, however, retained my office and headquarters in Kansas City during 1927 and '28.

Q. Were you at any time during these negotiations considered an employee or a member of the staff of Public Service Company of Colorado?

A. No, sir.

Q. Now you mentioned something to the effect that the men in the utility business had no idea as to the method of building the gas load in a particular utility property, but you didn't tell us to what date that situation was present.

Was that prior to 1926 or since that time?

A. That condition is not a function of time. It is more the function of background and experience. It still exists where the same conditions exist as existed at that time. If an organization or an individual has had long experience in the manufactured gas business, they will obviously have a manufactured gas viewpoint, and I might say at that point that the organization of the Public Service Company of Colorado at that time, in my opinion, was one of the best, if not the best manufactured gas organizations in the country and enjoyed a national reputation. So what I am saying is not critical of the Public Service Company of Colorado as an organization, but it is rather a statement of a condition which existed, namely, the necessary lack of experience in the natural gas business, because their business had been along other lines.

Q. Now, then, are you the duly authorized representative of Cities Service Company in all negotiations between the Colorado Interstate Gas Company and the other so-called partners that Mr. Burns referred to, such as the Southwestern Development Company and the Standard Oil Company; is that correct?

A. No, sir. I have participated in the negotiations.

Q. Who else was principal representative of Cities Service or Henry L. Dougherty & Company?

A. Mr. H. O. Caster and Mr. J. D. Crebeling.

Q. You described negotiations with the various participants which culminated in the building of a line by the Colorado Interstate Gas Company so that you apparently were familiar with all phases that entered into the final contract which you have identified as Exhibit 1 in the agreement. Is that correct?

A. That is true. You characterized me as the principal negotiator.

Q. I so understood from your direct testimony.

A. I just want to put the record straight that I was a party to the negotiations and was present at most of the discussions and furnished information to both Mr. Caster and Mr. Crebeling for their guidance and use and made recommendations for them and joined in the negotiations.

Q. Was there a time in those negotiations when the Colorado Interstate Gas Company wished to contract directly with Public Service Company of Colorado and Public Service of Colorado was not permitted to enter into a contract with Colorado Interstate Company for some reason by Cities Service Company?

A. No, sir.

Q. Isn't it a fact that Cities Service Company refused to permit Public Service of Colorado to enter into a contract with Colorado Interstate Gas Company until Colorado Interstate Gas Company paid Cities Service Company by this 15 per cent stock interest in Colorado Interstate Gas Company?

A. That was not my understanding.

Q. How was the determination of the 15 per cent stock interest of 187,500 shares of stock in Colorado Interstate Gas determined as the share which Cities Service Company was to receive?

A. By negotiation and agreement. There was considerable difference of opinion, claims and counter claims, and that was the final outcome of these discussions.

Q. Were you present during the discussions?

A. Yes.

Q. And negotiations?

A. Yes.

Q. Can you tell us what some of these claims and counter claims were that led up to the final bargain of 15 per cent?

A. Many of the claims and counter claims were demands on the part of Cities Service Company that it receive at least 33-1/3 per cent of the common stock of Colorado Interstate. The Southwestern Development Company and Standard Oil Company of New Jersey felt that 10 per cent was sufficient. The discussions involved the matter of Cities Service Company not participating at all, but resulted in it building a line of its own. The discussion also involved the purchase by Cities Service Company of common stock in addition to the 10 per cent heretofore mentioned. The discussion also included the possible purchase by Cities Service Company or its nominee of a portion of the bonds to be issued by Colorado Interstate. There was some discussion also at the time that the percentage of common stock would be allocated to the purchaser of the bonds, in which case the 33-1/3 per cent previously referred to would have been reduced to something like 28 per cent.

Those are a few of the discussions, claims and counter claims out of which grew the final agreement on the part of Cities Service Company to accept 15 per cent stock interest.

Q. Do you know whether or not Colorado Interstate Gas Company ever considered as one of the reasons for their being obliged to issue 15 per cent stock interest in their company as being grounded on the fact that Cities Service Company had refused to permit Public Service Company of Colorado to enter into a contract with Colorado Interstate Gas Company?

A. Well, there may have been statements or conversations along that line. I don't believe that was the real situation, however. The other two participants were more interested in securing a substantial load development on the line than in trying to produce the amount of common stock ownership.

Q. Now, the studies you were making in 1926 and 1927 when you say you were borrowed from the Gas Service Company—

A. Right.

Q: Weren't those being made on behalf of Public Service Gas Company of Colorado?

A. No, sir.

Indirectly would you say they were being made for Public Service Company of Colorado?

A. No, because those studies involved a state-wide situation involving Pueblo and various industries which were located at various points in the State, and Public Service Company, so far as I know, was never interested in building a pipe line, and hence only had an interest at that time in procuring a gas supply for Denver and environs.

Q. Was there any discussion in these negotiations in so far as Public Service Company acquiring this interest in Colorado Interstate is concerned?

A. No.

Q. In other words, the officers and directors of Public Service Company of Colorado have never at any time entertained any idea of acquiring any interest in Colorado Interstate Gas Company simultaneously with the entry into the contract for the purchase of natural gas from Colorado Interstate Gas Company?

A. I don't know what ideas they entertained. I never heard any such ideas so expressed.

Q. When you were in Denver, you saw Mr. Fowler, Mr. Loiseau and Mr. Board, did you not?

A. Yes.

Q. And you discussed this entire problem with them?

A. Yes.

Q. And was that question at all discussed as to the feasibility of acquiring directly without going through the circuitous route of inquiring into Cities Service Company?

A. No, sir; it was not discussed.

By Mr. Burns:

In 1926 and 1927, were you considering the feasibility of constructing a pipe line from the Amarillo Field to Colorado?

A. Yes.

Q. And whether that was to be constructed by Cities Service Company alone or in conjunction with others is the problem which you had under consideration?

A. That is correct.

By Mr. Davis.

Q. Now, Mr. Hancock, those expert services that the Cities Service Company organization rendered, and which was one of the claims you mentioned in this contract, as being one of the reasons for this 15 per cent interest to the effect that they would get behind a load building of the line, etc., did the Cities Service Company charge the Public Service Company of Colorado for that service?

A. Henry L. Dougherty & Company, fiscal agents for Cities Service Company, received compensation for that portion of the services rendered directly to Public Service Company of Colorado in the way of supplying experienced new business men, distribution engineers, men familiar with the change-over procedures. In other words, the work which was done in Denver and environs was handled in accordance with the service contract then in existence. In other words the supplying of personnel, which if not so supplied, would have had to been secured by Public Service from other sources, if it could have been so secured. The character of service to which I refer as being of the most value from the standpoint of the Colorado Interstate was the conception of sales plans and procedures presented to the Colorado Interstate Gas Company with suggestions as to how it proceeds to convince its city gate customers of the soundness of this plan, resulted in the stimulation of sale of gas for all the domestic and commercial purposes.

Q. Mr. Hancock, when I ask you a question a few moments ago as to whether or not you knew one of the reasons Cities Service Company obtained this 15 per cent stock interest was because Cities Service Company had refused to permit Public Service of Colorado to enter into a contract with Colorado Interstate Gas Company, you answered me that had not been the fact.

A. I don't think that was the fact; no, sir.

Q. I was reading that statement from a copy of the minutes of Colorado Interstate Gas Company. Did you know that statement was in the minutes of Colorado Interstate Gas Company?

Mr. Burns: I object to this as incompetent. It seems if they want to introduce the minutes of the Colorado Inter-

state Gas Company as proof of the inducing factor, that they ought to have the people here who prepared those minutes so that they will be subject to cross examination. The question he is asking now is tantamount to his offer of the minutes in evidence.

Mr. Davis: I asked him if he knew.

Mr. Burns: I am afraid that really is the same thing as putting them in the record.

Mr. Davis: He could tell us whether he knows.

Mr. Burns: Suppose he says yes or suppose he says no, the record shows in an indirect way that the minutes of the Colorado Interstate Company make a certain statement. Now if that statement is to be put in, it ought to be put in in proper form and have the people here who prepared those minutes and say how it was they happened to phrase the minutes that way, and whether the person that phrased the minutes knew what he was talking about, or whether it was just some lawyer trying to dress up some minutes.

Mr. Stern: The statement is a proper one on cross examination whether this witness knows that was in the minutes, and his knowing it was in the minutes, whether it was a factor in the consideration. That is what I take it Mr. Davis was asking.

By the Examiner:

Q. Do you know anything about the minutes?

A. I know about it now.

Q. Did you know about it until the question was asked?

A. Yes, but not until last week.

The Examiner: Off the record.

(Discussion off the record.)

The Examiner: On the record.

Mr. Stern: If the witness will state regardless of the appearance of this statement in the minutes of the Colorado Interstate Company his impression for the reasons for this contract were those he stated and he would not change it regardless of what appeared on the minutes, I understand that is correct.

The Witness: I will state that very definitely.

(Pp. 451-481.)

Pursuant to the stipulations of April 5, 1927 (Exhibit 1), the project parties thereto, in a letter dated June 8, 1927, and filed on their behalf by W. S. Fitzpatrick, made a written proposal in the name of Colorado Interstate Gas Company to Public Service Company of Colorado. This letter proposal of June 8, 1927 is Exhibit 4 herein.

EXHIBIT NO. 4.

The Prairie Oil and Gas Company.

W. S. Fitzpatrick,

Chairman of the Board.

June 8, 1927.

Public Service Co. of Colorado, Denver, Colorado, Attention,
George H. Shaw, Esq.

Dear Sir: The Colorado Interstate Gas Company, recently incorporated under the laws of Delaware for the purpose of transporting natural gas to Pueblo, Colorado Springs, Denver and other places in Colorado, makes the following proposition to the Public Service Company of Colorado for the sale and delivery of natural gas to it for distribution in the City and County of Denver:

1st. This offer is contingent upon the City of Denver establishing rates for natural gas distribution by the Public Service Company of Colorado, which will justify it in purchasing natural gas from the Colorado Interstate Gas Company at the city gate prices herein contained, which are at the minimum level sufficient to attract capital for the enterprise.

2nd. The Colorado Interstate Gas Company agrees to construct and put into operation a pipe line from a point in Union County, New Mexico to a point near the city line of the City of Denver, which pipe line will be of several sizes but not less than 16" outside diameter and adequate for all your requirements. Said pipe line will connect at said point in New Mexico with a Texas pipe line which will connect with and be supported by a large area of valuable gas reserves in the Counties of Hartley, Oldham, Moore, Potter, Carson and Hutchinson in the Panhandle of Texas.

3rd. The Colorado Interstate Gas Company will sell and deliver to the Public Service Company of Colorado,

(a) All of the natural gas requisite for the supplying of the domestic consumers connected to and served with gas from the Public Service Company of Colorado's pipe lines in the City of Denver and its environs.

(b) Such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the Colorado Interstate Gas Company by the Public Service Company of Colorado for the sale of gas upon special terms and conditions for consumers other than domestic consumers, and

(c) Such amounts of natural gas as the Public Service Company of Colorado may require for use in properties owned or occupied by it, which amounts, if desired upon special terms and conditions other than those applying to gas for domestic use hereunder, are deliverable only with the consent and approval of the Colorado Interstate Gas Company.

The obligation of the Colorado Interstate Gas Company to make the above deliveries of natural gas, must necessarily be subject to the available production from the sources above mentioned but to the extent of any shortage in supply, the Public Service Company of Colorado shall have the right to purchase or otherwise obtain gas from any available source or manufacture gas to supply, at its own expense, such portion of its requirements for its consumers as is not obtainable from the Colorado Interstate Gas Company.

4th. The prices to be paid by the Public Service Company of Colorado to the Colorado Interstate Gas Company for natural gas supplied hereunder, shall be as follows:

During the first fifteen years the city gate price shall be forty (40) cents per thousand cubic feet.

For gas for resale under special industrial contracts, submitted to and approved by the Colorado Interstate Gas Company, the price payable to the Colorado Interstate Gas Company shall be eighty-five per cent. (85%) of the price charged by the Public Service Company of Colorado to such industrial consumers under such approved contracts.

For gas purchased by the Public Service Company of Colorado for its use in power plant or plants, the price payable to the Colorado Interstate Gas Company shall be eighty-five per cent. (85%) of the same price or scale of prices at which the Public Service Company of Colorado is selling gas to an industrial consumer using similar quantities or at such prices as the parties may agree from time to time shall apply.

After the said period of the first fifteen years, the prices in effect at the end of said fifteen year period are to continue as basic prices, but if the Colorado Interstate Gas Company by reason of an increase in the cost of producing and obtaining natural gas, is obliged to pay an increased price for its supply of gas for the purposes of the Public Service Company of Colorado, over and above the average price paid during the eleventh to fifteenth years inclusive, then it may on six months' written notice, increase said basic prices to the same extent. In the event such increased prices are not acceptable to the Public Service Company of Colorado, the increase under the facts above set forth shall be arbitrated.

5th. The Public Service Company of Colorado is to convert its distribution plant into a natural gas distribution plant and is to use every reasonable effort to build up sales of natural gas and to distribute the same at uniform pressures throughout the plant of the Public Service Company of Colorado after receiving the gas at the city gate at a pressure of thirty (30) pounds per square inch. Demands of domestic consumers are to be preferred over service to industrial consumers, but such domestic preference is not to be exercised so as to deprive the Colorado Interstate Gas Company of the right to supply the Colorado Fuel & Iron Company enough gas to complete open hearth heats then in jeopardy and to keep warm any furnace or appliance to prevent damage to such appliance.

6th. The Colorado Interstate Gas Company agrees to use diligent effort to complete its pipe line and to be ready to supply natural gas to the Public Service Company of Colorado on or before the first day of December, 1928, and the term of the contract shall be for twenty (20) years and so long thereafter as natural gas may be profitably sold by

the Colorado Interstate Gas Company to the Public Service Company of Colorado hereunder.

7th. The details of this proposition are to be worked out and a contract between the parties entered into embodying the principle and substantial terms herein proposed. Your acceptance noted upon the duplicate of this letter will constitute a preliminary understanding between the Companies, which is to form the basis of said contract if and when satisfactory rates are established by the City of Denver.

Respectfully yours,

COLORADO INTERSTATE GAS COMPANY,
By W. S. FITZPATRICK,
Chairman of the Board of
Directors.

Approved and accepted by The Public Service Company of Colorado, June 8, 1927.

CLARE N. STANNARD,
Vice President and General
Manager.

During these negotiations with the city officials of Denver and Public Service, the project parties also opened negotiations with Pueblo Gas and Fuel Company, and that company in turn began negotiations with the City of Pueblo, also a Home Rule or Charter City like Denver, for the necessary franchise. These negotiations ultimately resulted in Franchise Ordinance No. 1245 introduced as Exhibit 39 herein. That ordinance was entitled:

"An Ordinance Granting Franchise Rights To The Pueblo Gas and Fuel Company, Subject to the Vote of The Qualified Taxpaying Electors, Establishing Rates to Be Charged for Natural and Artificial Gas, and Calling a Special Election to Determine Whether or Not Such Franchise Shall Be Granted."

The ordinance then recited:

"Whereas, The Pueblo Gas and Fuel Company has perfected arrangements for supplying natural gas to the people of the City of Pueblo, provided a schedule

of rates which will justify its expenditures on this account is established for a term of twenty (20) years; and—

“Whereas, The Pueblo Gas and Fuel Company must make extensive changes in its distribution system to provide for natural gas and must agree to pay a fixed and unchanging price for such natural gas throughout said period of twenty (20) years; and—

“Whereas, The Pueblo Gas and Fuel Company is unable to contract for a supply of natural gas and thereby reserve the same for use by the people of Pueblo for any period beyond the expiration of its franchise—

“Now, Therefore, Be It Ordained by the Council of Pueblo, Colorado:—” (Ex. 39, p. 1).

Section 1 then provided:

“That subject, to the approval of the qualified tax-paying electors of the City of Pueblo to be evidenced by their votes at the special election hereinafter provided for; the franchise is hereby granted by the City of Pueblo to The Pueblo Gas and Fuel Company, its successors and assigns, to construct, maintain and operate within the City of Pueblo, a plant for the manufacture and generation of gas with the right and privilege to distribute either natural or artificial gas to the City of Pueblo, its inhabitants and people in the vicinity by means of pipes, mains,” (Ex. 39, p. 1).

Rates for manufactured gas then being furnished were continued in effect, but it was then provided:

“In consideration of the agreement by The Pueblo Gas and Fuel Company—to be evidenced by its acceptance of this ordinance—to be prepared to furnish natural gas to the inhabitants of the City of Pueblo within two (2) years, to make, at its own expense, the alterations in its system and in its customers' domestic gas appliances necessary for the distribution thereof, and to contract with the Colorado Interstate Gas Company for a large reserve acreage of gas leaseholds in

the State of Texas to be made available for future use by the people of the City of Pueblo and other towns, cities, and places to be served by the proposed pipe line without discrimination against the City of Pueblo or its inhabitants; subject, however, to requirements for gas by Amarillo and a number of small towns in the Panhandle of Texas, and for helium gas by the United States Government from the Cliffside Structure, the following schedule of rates to be charged domestic consumers of natural gas is hereby established and declared to be fair and reasonable when applied and averaged throughout a period of twenty (20) years:—

(Ex. 39, p. 3).

Then followed a schedule of gas rates for gas at not less than 800 Btu. per cubic foot, precisely the same as that contained in the Denver Ordinance, Exhibit 24 above abstracted.

This Pueblo Franchise Ordinance then provided in Section 7 (Ex. 39, p. 4) that the "foregoing schedule shall remain in effect for a term of twenty (20) years from the date on which said company turns natural gas into its distribution system." It further provided that the gas should be supplied at not less than 800 Btu. heating value per cubic foot and that helium and gasoline might be extracted from the gas provided it did not lessen the heating value. Section 8 (Ex. 39, p. 4) then provided:

"It is further determined that the rates to be charged by said company for natural gas service to industrial users for heating, manufacturing and power purposes in the City of Pueblo may be lower and different from but not higher than those charged for domestic purposes and the company shall have the right to contract with industrial users for the sale of such natural gas, provided that all such contracts shall contain a 'cut-off' clause which recognizes the preferred right of the domestic users over the industrial users. The company shall from time to time make and file with the City Clerk a schedule or schedules of classifications for all industrial users and the rates charged under the classifications shall be on the basis of the volume used and the load requirements and all consumers of any class shall be supplied on equal terms, and further, these

schedules and rates as compared with corresponding schedules and rates in other places in Colorado using natural gas supplied by The Colorado Interstate Gas Company, shall not unjustly discriminate against the customers of The Pueblo Gas and Fuel Company."

(Ex. 39, pp. 4, 5).

The ordinance then required the Pueblo Gas and Fuel Company to make natural gas available within two (2) years under penalty of forfeiture of the franchise (Ex. 39, p. 5) and concluded by providing for newspaper publication of the proposed franchise and set the special election of the qualified taxpaying electors for April 6, 1928 (Ex. 39, pp. 5, 6).

Parenthetically, and out of chronological order, attention is here called to Exhibit 40 herein, Ordinance No. 1336 of Pueblo, passed September 5, 1934, entitled:

"An Ordinance authorizing The Pueblo Gas and Fuel Company to make effective a schedule of rates for natural gas service lower than those prescribed by Ordinance No. 1245 effective April 6, 1928, applicable to all residence service and to business space heating purposes."

This ordinance recited that the Pueblo Gas and Fuel Company had voluntarily reduced rates for certain quantities of domestic gas and for space heating when separately metered. This reduction was made to conform to a similar reduction in Denver. Both reductions by the respective distributing companies were made possible through a voluntary reduction by Colorado Interstate effective to the distributing companies August 24, 1934, described by Hendee, Colorado Interstate's manager, in Vol. IV, p. 525. There was a reduction of 4c in the gate rate for certain quantities and an additional 2c reduction for additional quantities of gas sold for domestic and for house heating purposes. Accordingly, the maximum reduction would be from 40c to 34c (Vol. IV, pp. 625, 626).

In the meantime the project parties, Southwestern, Standard and Cities Service, had through their representative, Fard, Bacon & Davis, Inc. (hereinafter called FB&D), opened negotiations with C. F. & I. for an industrial contract.

As shown in Exhibit 1, the project parties had tentatively hired FB&D to engineer, construct and operate the pipe line. The C. F. & I. industrial contract was considered by the project parties to be equally indispensable to the project as the contract with Public Service (Hill, Vol. II, p. 219; Payne, Vol. II, p. 517; Spencer, Vol. I, pp. 115, 116; Rhodes, Vol. IX, pp. 1211, 1212). George W. Bacon, chairman of the Board, and James F. Towers of FB&D, negotiated the contract on behalf of Colorado Interstate "before Colorado Interstate was formed and when the project was at its embryo." (Hill, Vol. II, p. 218). On Cross examination Rhodes testified:

"The original negotiation for that contract was made in Denver and Colorado Springs when I was here and I know the hard, bitter fight that Mr. Bacon and Mr. Towers of our organization went through to get that price agreed upon and the contract signed up. * * * I sat in with Mr. Bacon and Mr. Towers a good many nights after they had come back from their conferences and I know what they went through." (Vol. IX, pp. 1211, 1212).

Shortly after the passage of the Denver Franchise Ordinance of February 8, 1927, and as a result of these negotiations between them, C. F. & I. sent a letter to FB&D dated February 19, 1927 (Exhibit 9), making an application for natural gas for its fuel requirements, except boiler fuel, at its steel plant in Pueblo. It offered to pay for this gas at the rate of 16c per Mcf. for the first five years and 18c per Mcf. for an additional five-year period. The letter stated:

"We understand that the gas which you will supply us hereunder will be from the same source as the supply of gas for the cities of Pueblo, Colorado Springs, Denver, and other places, and, in emergencies or cases of temporary shortage of gas, the demands of domestic consumers upon said supply are to be preferred over service to us hereunder, and we agree that you may under said circumstances pro rate any remainder, after demands of domestic consumers, among your industrial consumers. Nothing herein, however, shall give you the

right to exercise such domestic preference so as to deprive us of the volume of gas needed to complete open hearth heats then in jeopardy, and to keep our furnaces warm during extreme domestic demand upon your pipe line."

This application and offer was to be binding upon C. F. & I. for twelve months, within which time the letter stated it was understood that the project parties would attempt to secure contracts with distributing companies at Denver, Colorado Springs and Pueblo upon terms which would justify the construction of the pipe line. The letter also stated that C. F. & I. granted an option to the project parties to supply their boiler fuel requirements for five years at 10c per Mcf. This option could also be exercised at any time within the year. Within the year, and on February 2, 1928, FB&D, acting on behalf of Colorado Interstate, wrote C. F. & I. advising that it had procured other contracts which justified the construction of the line and that accordingly C. F. & I.'s application of February 19, 1927, for gas for all of its fuel requirements except boiler fuel, was accepted. As to the supply of gas for boiler fuel, action was reserved. (Exhibit 9).

On February 15, 1928, C. F. & I. replied to FB&D confirming the arrangement and granting to the project parties, represented by FB&D, additional time until May 19, 1928, within which to accept the proposal with respect to boiler gas. (Exhibit 9).

On May 1, 1928, FB&D, on behalf of the project parties, wrote to C. F. & I. exercising the option to supply gas for boiler fuel for the generation of steam, as proposed, for a period of five years. (Exhibit 9). This contract was formally assigned by FB&D to Colorado Interstate and will be abstracted hereinafter under the head of "Contracts of Colorado Interstate."

The abbreviation C.F.&I. employed herein means Colorado Fuel & Iron Company, and the abbreviation F.B.&D. employed herein means Ford, Bacon & Davis, Inc.

Exhibit A to Stipulation and Designation of
Printed Record.

The following appears in the record with reference to Southwestern Development Company, Standard Oil Company (N. J.), and Cities Service Company:

Southwestern Development Company. This company was organized under the laws of the State of Colorado in July, 1924. 51% of its voting stock was issued to the Mountain States Gas Company, and 49% to the Mission Oil Company. The Mountain States Gas Company was a wholly-owned subsidiary of Producers and Refiners Corporation. Mountain States Gas Company was subsequently dissolved and thereafter this stock was held directly by Producers and Refiners Corporation (Exhibit 146-A, p. 14). From July, 1924, to May, 1934, 51% of the issued and outstanding capital stock of Southwestern Development Company was owned and held by Producers and Refiners Corporation (T., 57); and from January 1, 1924, to the date of the Producers and Refiners Corporation receivership in 1932, which resulted from that corporation's defaulting on certain promissory note obligations held by New York banks which had been endorsed or guaranteed by The Prairie Oil and Gas Company (Exhibit 10, pages 623, 772). The Prairie Oil and Gas Company held the controlling stock interest in Producers and Refiners Corporation by virtue of its ownership of approximately 65% of the issued and outstanding voting stock. Prairie officers and directors were represented on the board of directors of Producers and Refiners Corporation by W. S. Fitzpatrick, Dana H. Kelsey and N. K. Moody from about January 1, 1924, to about April 1, 1932.

House Report No. 2192, submitted to the Seventy-second Congress, Second Session, and entitled, "Report on Pipe Lines" (Exhibit 288 herein), contains the following statement with respect to stock ownership of The Prairie Oil and Gas Company and Sinclair Consolidated Oil Corporation, respectively, to-wit:

The Prairie Oil and Gas Company. On December 31, 1931, members of the Rockefeller family (J. D. Rockefeller, P. Rockefeller, J. A. Garner, and Mrs. G. R. Dodge, Trustee) held approximately 14.82% of the voting stock of The Prairie Oil and Gas Company. Petroleum Corporation of

America, on the same date, held 23.91% of the voting stock of The Prairie Oil and Gas Company. Sinclair Consolidated Oil Corporation, on the same date, owned approximately 19% of the stock of Petroleum Corporation of America (Exhibit 288, pages 46-47). The remainder of the stock was diffused among numerous stockholders (Exhibit 288, Index, p. 32).

Sinclair Consolidated Oil Corporation. On March 9, 1932, Pierce Oil Corporation held 10.57% of the voting stock of Sinclair Consolidated Oil Corporation. John D. Rockefeller held directly 253,600 shares of Sinclair Consolidated Oil Corporation, being approximately 4.1% of the total stock issued and outstanding (Exhibit 288, pages 43-44). The remainder of the stock of Sinclair Consolidated Oil Corporation was widely diffused (Exhibit 288, Index, page 32). Effective as of March 31, 1932, Sinclair Consolidated Oil Corporation acquired all the assets of The Prairie Oil and Gas Company, title to said assets being taken in the name of various subsidiaries of Sinclair Consolidated Oil Corporation. On the same day the name of Sinclair Consolidated Oil Corporation was changed to Consolidated Oil Corporation (Exhibit 288, page 40). Since May, 1934, 51% of the stock of Southwestern Development Company (formerly held by Producers and Refiners Corporation) has been held by Consolidated Oil Corporation (T., 57). This stock was purchased at the Receiver's sale of Producers and Refiners Corporation in May, 1934 (Exhibit 100, page 611). As of December 31, 1939, the largest stockholder in Consolidated Oil Corporation was Petroleum Corporation of America, holding 8.4% (Exhibit 142, page 23), and on the same date Consolidated Oil Corporation held 40.3% of the voting stock of Petroleum Corporation of America. No other stockholder held over 10% of the outstanding stock of Petroleum Corporation of America (Exhibit 142, page 55).

In Exhibit 141-A, page 7713 (being excerpts from the "Hearings Before the Temporary National Economic Committee," Seventy-sixth Congress, Second Session, September 25, 1939) the following appears:

Common Stock Held by the Largest 100 Stockholders
of the Major Oil Companies.

The Temporary National Economic Committee requested in its questionnaire that the oil companies supply—

"A list containing the names and addresses of the largest 100 common stockholders, corporate and individual, as of December 31, 1938 and the number of shares held by each." Also "The total number of common stockholders as of December 31, 1938." See Table F, following:

Table F.—Shares of Common Stock Held by the 100 Largest Stockholders of the Major Oil Companies,¹ December 31, 1938.

Name of Company	Total Number of Common Stockholders	Total Common Shares Outstanding	Shares Held by 100 Largest Stockholders	Percentage
Shell Union Oil Corp.	17,393	13,070,625	11,624,611	88.9
Sun Oil Co.	5,226	2,316,484	1,966,808	84.9
Skelly Oil Co.	3,152	995,349	817,245	82.1
Standard Oil Co. (Ohio)	3,532	753,740	521,166	69.1
Tide Water Assoc. Oil Co.	24,116	6,375,253	4,066,873	63.7
Gulf Oil Corp. of Pa.	15,135	13,751,846	7,430,934	54.0
Standard Oil Co. (N. J.)	126,383	26,618,065	12,582,063	47.3
Ohio Oil Co.	31,287	5,563,377	2,955,244	45.0
Socony-Vacuum Oil Co.	113,240	31,206,071	12,803,585	41.0
Continental Oil Co.	29,969	4,738,593	1,688,030	35.6
Consolidated Oil Corp.	69,068	13,751,846	4,801,289	34.9
Standard Oil Co. (Ind.)	99,665	15,272,020	5,267,862	34.5
Pure Oil Co.	29,033	3,982,051	1,359,356	34.1
Phillips Petroleum Co.	40,105	4,449,052	1,355,054	30.4
Union Oil Co. of Calif.	26,524	4,666,270	(2) ²	28.1
Texas Corporation	86,380	10,876,882	2,605,090	24.0
Atlantic Refining Co.	29,313	2,663,999	633,271	23.8
Cities Service Co.	466,658 ²	3,704,067	776,599	21.0

¹Source: T.N.E.C. Questionnaire. Standard Oil Company of California and Mid-Continent Petroleum Corporation did not answer.

²Figure not available, as company reported percentage only.

The following also appears in said Exhibit 141-A, pages 8007-8009:

Consolidated Oil Corporation.

3. Following is a list containing the names and addresses of the 100 largest common stockholders (as disclosed by the stock records), corporate and individual, as of December 31, 1938, and the number of shares held by each:

	Shares
Abbott, Proctor & Paine, 120 Broadway, New York N. Y.	27,508
Leon Aerts, c/o Banque Belge p'our L'Etranger, 67 Wall St., New York, N. Y.	19,168
Atwell & Co., 45 Wall St., New York, N. Y.	25,172
Auerbach, Pollak & Richardson, 30 Pine St., New York, N. Y.	14,687
J. S. Bache & Co., 42 Broadway, New York, N. Y. ...	63,689
Bank of New York, Lawrence Morris & Josiah Macy Willets, Trustees for Kate M. Ladd u/a dated Nov. 29, 1938, 48 Wall St., New York, N. Y.	25,000
James E. Bennett & Co., 50 Broadway, New York, N. Y.	16,435
Harry Payne Bingham, c/o First Nat. Bank, 2 Wall St., New York, N. Y.	50,000
Louis C. Blöndermann, 52 William St., New York, N. Y.	13,820
Mrs. Mabel Tremain Brewster, 52 Vanderbilt Ave., New York, N. Y.	15,810
Brown Bros. Harriman & Co., 59 Wall St., New York, N. Y.	24,043
Mrs. Mary Flagler Cary, 1009 Park Ave., New York, N. Y.	21,400
Central Hanover Bank & Trust Co., 70 Broadway, New York, N. Y.	10,049
S. B. Chapin & Co., 111 Broadway, New York, N. Y. ...	29,822
The Chase National Bank of the City of New York, Trustee for benefit of David Rockefeller, Personal Trust Dept., 11 Broad St., New York, N. Y. ...	75,200
The Chase National Bank of the City of New York, Trustee for benefit of Laurance S. Rockefeller, Personal Trust Dept., 11 Broad St., New York, N. Y.	74,000

Shares.

The Chase National Bank of the City of New York, Trustee for benefit of Winthrop Rockefeller, Personal Trust Dept., 51 Broad St., New York, N. Y.	75,100
The Cleveland Trust Co., Euclid Ave. & E. 9th St., Cleveland, Ohio	28,243
Mrs. Helen P. Dane, 6 Beacon St., Boston, Mass.	30,740
Carbon P. Dubbs, Chelston, East Paget, Bermuda	11,400
Harry Harkness Flagler, 32 Park Ave., New York, N. Y.	57,000
Harry Harkness Flagler, Trustee for Jean Louise Flagler U-A Dated July 2, 1931, 32 Park Ave., New York, N. Y.	15,500
Charles Frederick & Co., c/o Irving Tr. Co., For- eign Office, 1 Wall St., New York, N. Y.	15,861
Cobb & Co., c/o Customers Securities Dept., The New York Trust Co., 100 Broadway, New York, N. Y.	10,852
Consolidated Oil Corporation (Treasury Stock), 630 Fifth Ave., New York, N. Y.	76,843
Cudd & Co., c/o The Chase Nat'l Bk., Personal Trust Dept., 11 Broad St., New York, N. Y.	12,699
Dean Witter & Co., 14 Wall St., New York, N. Y.	12,322
Dominick & Dominick, 115 Broadway, New York, N. Y.	17,741
Mrs. Lela H. Edwards, 316 Fourth Ave., Common- wealth Bldg., Pittsburgh, Pa.	37,200
Fenner & Beane, 67 Broad St., New York, N. Y.	68,793
Fuller, Rodney & Redmond, 44 Wall St., New York, N. Y.	12,563
Garner & Co., 140 Broadway, New York, N. Y.	14,750
Goodbody & Co., 115 Broadway, New York, N. Y.	14,598
Mrs. Edith Hale Harkness, c/o New York Trust Co., Income Collection Dept., 100 Broadway, New York, N. Y.	92,437
Harris Upham & Co., 11 Wall St., New York, N. Y.	127,191
Hayden, Stone & Co., 25 Broad St., New York, N. Y.	27,555
H. Hentz & Co., 60 Beaver St., New York, N. Y.	30,935
Hirsch, Lilienthal & Co., 165 Broadway, New York, N. Y.	11,925
John Huntington Hord, 1564 Union Trust Bldg., Cleveland, Ohio	12,943

	Shares
Hornblower & Weeks, 40 Wall St., 12th Fl., New York, N. Y.	52,581
John W. Hubbard, 605 Granite Bldg., Pittsburgh, Pa.	12,000
The John Huntington Corp., c/o The Cleveland Trust Co., Estates Department, Cleveland, Ohio	12,936
Hurley & Co., A Partnership, 55 Wall St., New York, N. Y.	11,268
E. F. Hutton & Co., 61 Broadway, New York, N. Y.	50,377
Jessup & Lamont, 26 Broadway, New York, N. Y.	100,740
Josephthal & Co., 120 Broadway, New York, N. Y.	18,469
Kidder Peabody & Co., 17 Wall St., New York, N. Y.	17,628
King & Co., c/o City Bank Farmers Trust Co., 22 William Street, New York, N. Y.	10,102
John Kogting (Consolidated Oil Corp.—Treasury Stock), c/o Consolidated Oil Corp., 630 Fifth Avenue, New York, N. Y.	390,146
Kuhn Loeb & Co., 52 William St., New York, N. Y.	11,637
Walker G. Ladd, c/o W. R. Reed, 19 Rector St., Rm. 2302, New York, N. Y.	11,435
Laidlaw & Company, 26 Broadway, New York, N. Y.	18,648
Lamson Bros. & Co., 2200 Board of Trade Bldg., Chicago, Ill.	12,415
Lewis Cass Ledyard, Lewis Cass Ledyard, Jr. & U. S. Tr. Co. of N. Y., Trsts of Tr. U-Will Payne Whitney, Dec'd for Ben. of Helen Hay Whitney & Remaindermen, 45 Wall St., New York, N. Y.	44,200
Lewis Cass Ledyard, Lewis Cass Ledyard, Jr. & U. S. Tr. Co. of N. Y., Trsts of Tr. U-Will Payne Whitney, Dec'd for Ben. Joan Whitney Payson & Remaindermen, 45 Wall St., New York, N. Y.	15,700
Lewis Cass Ledyard, Lewis Cass Ledyard, Jr. & U. S. Tr. Co. of N. Y., Trsts of Tr. U-Will Payne Whitney, Dec'd for Ben. of John Hay Whitney & Remaindermen, 45 Wall St., New York, N. Y.	21,500
Lehman Bros., 1 William St., New York, N. Y.	13,827
Carl M. Loeb, Rhoades & Co., 61 Broadway, New York, N. Y.	16,688
George W. Loft, 10 E. 40th St., New York, N. Y.	15,246
The Lynnewood Corp., c/o Wilmington Trust Co., Wilmington, Del.	30,000

	Shares
Mae & Co., c/o Union Tr. Co. of Pittsburgh, Box 926, Pittsburgh, Pa.	13,956
Marrs McLean, Frost Nat. Bank Bldg., San Antonio, Texas	20,400
Merrick & Co., 100 Broadway, New York, N. Y. Cus. Sec. Dept.	11,159
Mitchell Hutchins & Co., 231 South LaSalle St., Chicago, Ill.	12,191
John Mooney, c/o Petroleum Corp. of America, 15 Exchange Place, Jersey City, N. J.	84,200
O'Neill & Co., P. O. Box 28, Wall St. Station, New York, N. Y.	19,760
Orvis Bros. & Co., 60 Broadway, New York, N. Y.	10,964
Paine, Webber & Co., 25 Broad St., New York, N. Y.	30,378
Mrs. Joan W. Payson, 45 Wall St., New York, N. Y.	23,359
Perkins & Co., c/o Commercial Trust Co. of N. J., 15 Exchange Pl., Jersey City, N. J.	12,000
Petroleum Corporation of America, 15 Exchange Place, Jersey City, N. J.	115,646
Carl H. Pforzheimer & Co., 25 Broad St., New York, N. Y.	26,200
E. A. Pierce & Co., 40 Wall St., New York, N. Y.	89,009
Pierce Oil Corp., 120 Wall St., New York, N. Y.	220,683
Pierce Petroleum Corp., 120 Wall St., New York, N. Y.	120,800
Post & Flagg, 49 Broad St., New York, N. Y.	48,066
Pouch & Co., 52 Wall St., New York, N. Y.	11,740
Harold I. Pratt, c/o Charles Pratt & Company, 26 Broadway, New York, N. Y.	15,950
Mrs. Ruth Baker Pratt, c/o Charles Pratt & Co., 26 Broadway, New York, N. Y.	22,950
Mrs. Alta Rockefeller Prentice, The Chase National Bank, Personal Trust Dept., 11 Broad St., New York, N. Y.	105,620
President and Fellows of Harvard College, 24 Milk St., Boston, Mass.	50,000
The Real Estate Tr. Co. of Phila., Sallie S. Houston, S. F. Houston & Edgar Dudley Faries Surviving Trustees of Estate of Henry H. Houston, Dec'd, Philadelphia, Pa.	93,732
Rockefeller Center, Inc., 30 Rockefeller Plaza, New York, N. Y.	500,000

	Shares
Salkeld & Co., c/o Bankers Trust Co., P. O. Box 704, Church St. Annex, New York, N. Y.	20,249
J. & W. Seligman & Co., 54 Wall St., New York, N. Y.	24,473
Henry L. Shattuck, 50 Federal Street, Boston, Mass.	12,000
Sigler & Co., c/o Central Hanover Bank & Tr. Co., 70 Broadway, New York, N. Y.	31,055
Smith, Barney & Co., 14 Wall St., New York, N. Y.	25,193
Supervised Shares, Inc., c/o State Street Trust Co., Boston, Mass.	15,000
Tegge & Co., c/o Guaranty Trust Co. of N. Y., 140 Broadway, New York, N. Y.	10,152
Mrs. Adabelle B. Terry, c/o Guaranty Trust Co. of N. Y. Att. Custody Div., 524 Fifth Ave., New York, N. Y.	10,511
Thomson & McKinnon, 11 Wall St., New York, N. Y.	71,155
Trustees of the Massachusetts Investors Trust Un- der a Declaration of Trust Dated March 21, 1924, c/o State Street Trust Co., Boston, Mass.	30,000
The Union Trust Co. of Pittsburgh, P. O. Box 755, Pittsburgh, Pa.	22,001
Alvin Untermeyer, 30 Pine St., New York, N. Y.	12,720
Samuel Untermeyer, 30 Pine St., New York, N. Y.	27,000
Weber & Co., c/o Farmers Loan & Tr. Co., 22 Wil- liam St., New York, N. Y.	11,900
Winthrop, Mitchell & Co., 26 Broadway, New York, N. Y.	36,215
Worham Albert & Co., 64 Wall St., New York, N. Y.	11,290
Yale University, Treasurer's Office, New Haven, Conn.	30,964

As of December 31, 1939, Mission Oil Company's holdings of Southwestern Development Company's common stock was 47.28%; members of the Jones family held 28.88% of the stock of Mission Oil Company, and Consolidated Oil Corporation, through P. C. Spencer, held approximately 3.97% of such stock (Exhibit 141 and Exhibit 142, p. 43).

Standard Oil Company (N. J.). Since its organization Rockefeller interests, or members of the Rockefeller family, have held stock in this company. In the year 1926 or 1927, about the time of the negotiations of the agreement of April 5, 1927 (Exhibit 1), John D. Rockefeller, Jr. held approxi-

mately 11% of the voting stock of the company (T., p. 15825). As of November 16, 1931, members of the Rockefeller family and various educational and charitable institutions and trust estates set up by that family held approximately 16.47% of the voting stock of the company. Of this percentage John D. Rockefeller, Jr., the largest stockholder in the company, held 11.14%, and the educational institutions endowed by John D. Rockefeller, Sr., 5.33%. Approximately 4% of the outstanding stock was owned by employees of the company. The remainder of the stock was widely diffused (Exhibit 288, pages 210, 211). As of December 31, 1933, members of the Rockefeller family and charitable institutions and trust estates set up by them held directly 13.21% of the voting stock of the company (Exhibit 141). The remainder of the stock was widely diffused.

Cities Service Company: It is stated by A. E. Lundvell, Examiner of Accounts, in his Report to the Federal Trade Commission (Document 92, Seventieth Congress, First Session, June 15, 1934—Exhibit 54, page 785 in this proceeding): that

"Since September, 1910, the Cities Service Company has been controlled by Henry L. Doherty & Company through stock ownership, and its operations have been supervised through Henry L. Doherty & Company as fiscal agent."

(The Report of Lundvell is included in Document 92 as Exhibit No. 5997, pages 767-1051.)

As of March 14, 1931, the H. L. Doherty interests held 29.6% of the voting stock of the Cities Service Company (Exhibit 54, page 776).

As of December 31, 1938, the H. L. Doherty interests owned 5.88% of the voting stock of Cities Service Company (Exhibit 141).

It is further stated in said Report to the Federal Trade Commission (Exhibit 54, p. 780) as to the parties constituting the firm of Henry L. Doherty & Company, as follows:

Henry L. Doherty & Co.—Henry L. Doherty & Co. was formed January 1, 1906, as a partnership, with Henry L. Doherty and Frank W. Frueauff as partners. Mr. Charles

T. Brown was tentatively accepted as a partner on or about January 1, 1910, but the partnership agreement was never executed. On August 24, 1915, Mr. Brown's authority to obligate the firm in any way was terminated by contract. The death of Mr. Pruecauff on July 31, 1922, terminated the partnership, after which the firm name and business of Henry L. Doherty & Co. have been continued by Henry L. Doherty as sole proprietor.

It appears that the firm of Henry L. Doherty & Co. was formed by Henry L. Doherty to conduct the business of financing and operating public-utility enterprises. From the beginning the firm has maintained a staff of executives, engineers, accountants, and operating personnel trained to supervise the operations and development of such enterprises as well as others with which it later became identified.

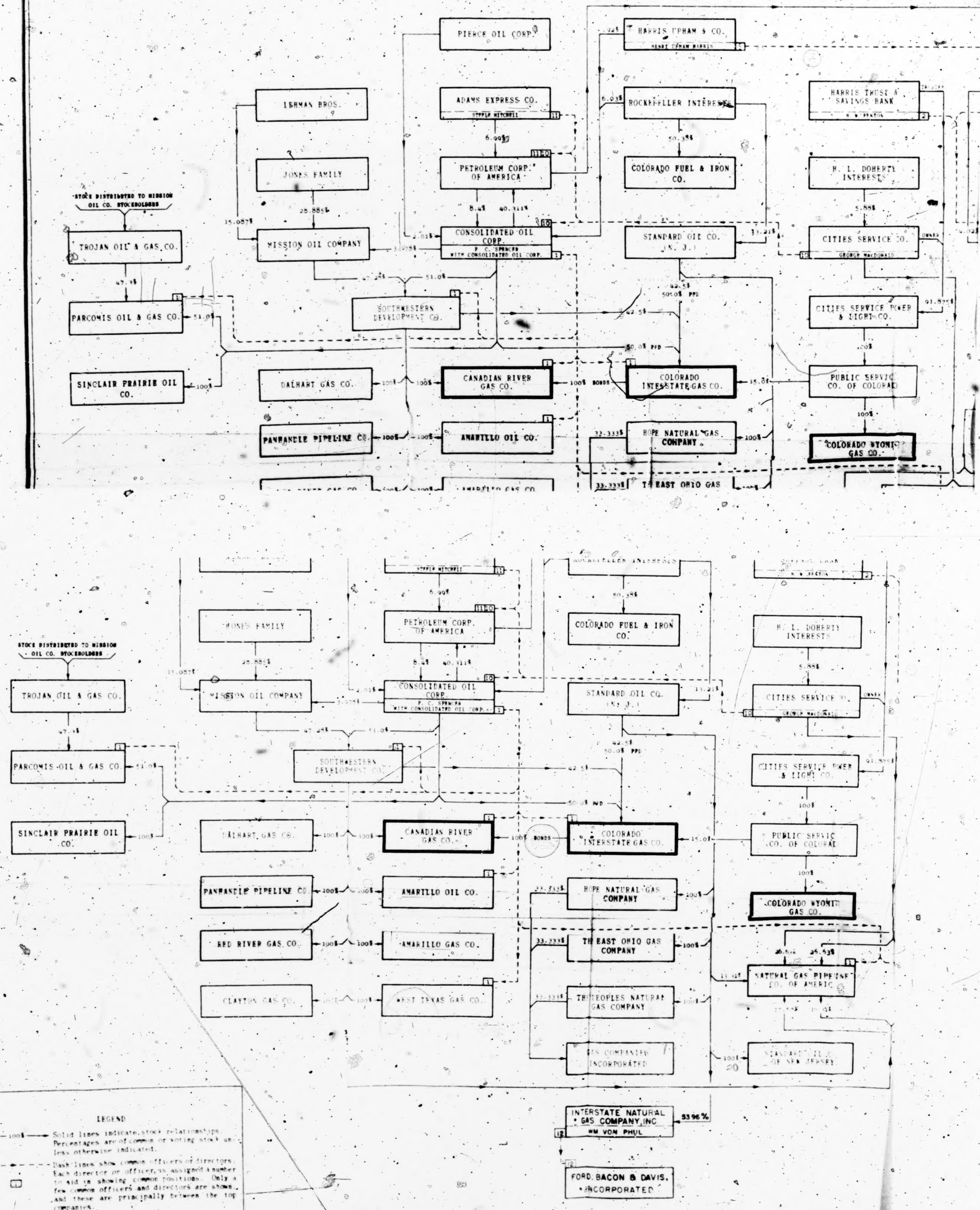
Through the medium of the Doherty Operating Co., which was organized in 1906, Henry L. Doherty & Co. secured operating and management contracts and ultimate control of a number of public-utility operating companies. These acquisitions led to the organization of the Cities Service Co. and are now part of the Cities Service System.

The balance of the stock was widely diffused (Exhibit 141-A).

Over a period of years the Cities Service Company has held in excess of 90% of the voting stock of Cities Service Power and Light Company, which latter company in turn owns the controlling stock in Public Service Company of Colorado, the company that distributes gas in the City of Denver and surrounding areas (Exhibit 54, page 796, and Exhibit 141).

Public Service Company of Colorado holds 100% of the stock of Colorado-Wyoming Gas Company (Exhibit 141).

**CHART SHOWING CORPORATE RELATIONSHIP
BETWEEN
CANADIAN RIVER GAS CO., COLORADO INTERSTATE GAS CO., COLORADO-WYOMING GAS CO., AND CERTAIN
AS OF
DECEMBER 31, 1939***



**CHART SHOWING CORPORATE RELATIONSHIP
BETWEEN
S CO., COLORADO INTERSTATE GAS CO., COLORADO-WYOMING GAS CO., AND CERTAIN OTHER COMPANIES,
AS OF
DECEMBER 31, 1939***

